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TRANSCRIPT OF RECORD

IN THE

Supreme Court of the United States

October Term, 1944

No. 980

DEWEY HENRY WOMBLE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Rotary Colorprint, 55 Eleventh Street, San Francisco

No. 10811

United States
Circuit Court of Appeals
For the Ninth Circuit.

DEWEY HENRY WOMBLE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division

Barnes Colorprint, 55 Eleventh Street, San Francisco

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Attorneys for Appellee:

FRANK J. HENNESSY, ESQ.

United States Attorney,

THOMAS O'HARA, ESQ.

Assistant U. S. Attorney,
Sacramento, Calif.

In the Northern Division of the United States District Court for the Northern District of California

INDICTMENT

In the April 1944 term of said Division of said District Court the Grand Jurors thereof, on their oaths present: That

DEWEY HENRY WOMBLE

hereinafter called the defendant, heretofore, to-wit, on or about the 10th day of July, 1943, at Louisville, in the State of Kentucky, did knowingly, wilfully, unlawfully and feloniously transport, cause to be transported, and assist in transporting in interstate commerce, a woman, to-wit, one Dewell Kathleen Womble, from Louisville, in the State of Kentucky, aforesaid, to the City of Stockton in the County of San Joaquin, within the Northern Division of the Northern District of California, and within the jurisdiction of this Court then and there being, by means of a certain automobile running over the public highways of the United States and of the States of Kentucky and California; that said woman was so transported as aforesaid by said defendant with intent and purpose on the part of said defendant that said

woman should practice prostitution and engage in other immoral practices. (T. 18 USCA, 398)

FRANK J. HENNESSY,
United States Attorney,
By THOMAS O'HARA,
Assistant United States Attorney.

[Endorsed]: A true bill. R. N. Philpot, Foreman.

[Endorsed]: Filed April 10, 1944. C. W. Calbreath, Clerk. [1*]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Friday, the 14th day of April, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

No. 8775

PLEA OF NOT GUILTY

This case came on this day for the defendant to plead. The defendant was present in custody of the U. S. Marshal and in proper person. Emmet J. Seawell, Assistant U. S. Attorney, was present for and on behalf of the United States. The de-

*Page numbering appearing at foot of page of original certified Transcript of Record.

fendant was called to plead, and thereupon plead Not Guilty to the Indictment, which said plea was Ordered entered. The defendant and the attorneys, for both parties, in open Court orally demanded trial by jury. Ordered this case be continued to May 11, 1944, for trial. Ordered defendant be remanded to the custody of the U. S. Marshal, in default of bail. [2]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held in the Court Room thereof, in the City of Sacramento, on Thursday the 11th day of May, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

No. 8775

TRIAL

This case came on this day for trial. The defendant was present in Court in custody of the U. S. Marshal and in proper person. The defendant and attorneys for both parties in open Court, orally waived trial by jury. Ordered this case be continued to June 1, 1944, for trial. Ordered defendant be remanded to the custody of the U. S. Marshal to await trial. [3]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held in the Court Room thereof, in the City of Sacramento, on Thursday, the 1st day of June, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

No. 8775

FURTHER TRIAL

This case came on regularly this day for trial before the Court sitting without a jury, a trial by jury having been heretofore orally waived in open Court by the defendant and the attorneys. The defendant Dewey Henry Womble was present in the custody of the U. S. Marshal and with Harold Wyatt, Esq., his Attorney. Thomas O'Hara, Esq., Assistant U. S. Attorney, was present for and on behalf of the United States. Steven E. Culp, Domingo Tasini, Tiny Avila, Sally Mason, Bert E. Hart, Herbert C. Graham, Arthur E. Miller, Harold Baker, Alfred O. Lewis, Joseph Hayworth and Norman C. Sullivan were sworn and testified for and on behalf of the United States. Mr. O'Hara introduced in evidence and filed U. S. Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, and the United States rested. Mr. Wyatt made a motion for the dismissal of the Indictment, and after hearing Mr. Wyatt and Mr. O'Hara, it is Ordered that the motion be and the same is hereby denied. Or-

dered that the further trial of this case be continued until June 2, 1944, at 10 o'clock a. m. [4]

At a stated term of the Nortehrn Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Friday, the 2nd day of June, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

No. 8775

FURTHER TRIAL

The defendant herein and the attorneys being present as heretofore, the further trial of this case was thereupon resumed. Mr. O'Hara made a motion to reopen the Government's case, and after hearing Mr. O'Hara and Mr. Wyatt, it is Ordered that the motion be and the same is hereby granted. Charles W. Potter and Mervin Garibotto were sworn and testified for and on behalf of the United States, and the United States rested. The defendant rested. Thereupon the evidence was closed. After argument by the Attorneys to the Court, it is Ordered that this case be and is hereby submitted to the Court for consideration and decision. It is further Ordered that this case be and the same is hereby continued to June 3, 1944, at 10 o'clock a. m. for decision. [5]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Saturday, the 3rd day of June, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

No. 8775

JUDGMENT

The defendant herein and the attorneys being present as heretofore, this case came on for the Court's decision. The case having been heretofore submitted, being now fully considered, it is Ordered that the defendant Dewey Henry Womble be adjudged Guilty of the offense charged in the Indictment. The defendant was called for judgment, and having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By the Court Ordered and Adjudged that the defendant, having been found Guilty of said offense, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Five (5) Years in a United States Penitentiary, and that judgment be entered herein accordingly. It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the U. S. Marshal or other qualified officer and that the same shall serve as the commit-

ment herein. Mr. Wyatt made a motion that exceptions have been deemed made to all rulings of the Court, and there being no opposition by Mr. O'Hara, it is Ordered that the motion be and the same is hereby Granted. [6]

In the Northern Division of the United States District Court for the Northern District of California

No. 8775

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

DEWEY HENRY WOMBLE,
Defendant.

MOTION FOR NEW TRIAL

Comes now the defendant Dewey Henry Womble, and moves the above entitled court to set aside the judgment heretofore rendered herein and to grant a new trial of the above entitled cause, and for grounds of said motion specified:

(1) That the court has committed error in rulings on matters of law arising during the course of the trial.

(2) That the verdict and judgment are contrary to the evidence and contrary to the law.

(3) That the court erred in considering evidence of the registry of Dewel Kathleen Womble at the

Hotel Wolf, in the City of Stockton, State of California and the subsequent activities of the defendant in connection therewith for any purpose other than a showing of the completion of the transportation alleged in the indictment and that the court particularly erred in considering said evidence as support for any allegations of other immoral practices for the reason that the indictment did not charge the defendant with a violation of section 398 of the Criminal Code based upon a separate count charging other immoral practices.

Dated: June 5, 1944.

HAROLD WYATT,
Attorney for Defendant.

[Endorsed]: Filed June 6, 1944. [7]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Tuesday, the 13th day of June, in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Martin I. Welsh, District Judge.

[Title of Cause.]

No. 8775

ORDER DENYING MOTION FOR NEW TRIAL

This case came on regularly this day for a hearing of the motion for a new trial. The defendant Dewey Henry Womble was present in the custody

of the U. S. Marshal and with Harold Wyatt, Esq., his Attorney. Thomas O'Hara, Esq., Assistant U. S. Attorney, was present for and on behalf of the United States. After hearing Mr. Wyatt and Mr. O'Hara, it is Ordered that the motion for a new trial be and the same is hereby denied. [8]

[Title of Court and Cause.]

NOTICE OF APPEAL

The appellant herein is the above named Dewey Henry Womble and his address is Sacramento County Jail, Sacramento, California. Appellant's attorney is Harold Wyatt whose address is Belding Building, Stockton, California. The offense for which the defendant was convicted is violation of title 18 USCA, section 398 and the indictment herein charged the unlawful transportation therein mentioned with the intent and purpose on the part of said defendant that one Dewel Kathleen Womble should practice prostitution and engage in other immoral practices. Judgment of guilty was rendered on June 3, 1944, and the defendant was sentenced to five years in the federal penitentiary. The defendant is not on bail and is at the present confined in the Sacramento County Jail in Sacramento, California.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned

and from the court's order denying defendant's motion for new trial on the grounds set forth below.

(1) That the evidence was wholly insufficient to justify the judgment of guilty.

(2) That the court committed error in rulings on questions of law relating to the introduction of evidence and in connection with the permitting of the reopening of the case by the government after the government had rested. [9]

(3) That the court committed error in accepting and considering evidence purposting to show debauchery and other immoral practices in view of the failure of indictment to set forth separate counts showing these as grounds for violation of said title 18 USCA, section 398.

DEWEY WOMBLE,
Defendant.

[Endorsed]: Filed June 16, 1944. [10]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Now comes the defendant, Dewey Henry Womble, by his Attorney, and says that in the proceeding herein, and in the orders and judgment entered, there are manifest errors, to wit:

ASSIGNMENT OF ERROR No. 1

The Court erred in presuming "transportation" of Dewel Kathleen Womble in interstate commerce

from the mere fact that they journey together from one state to another. The only testimony on this question came from the government witness, Stephen Elray Culp, who testified on this subject as follows:

Q. And what arrangements, if any, were made in respect to the transportation and the payment of the expenses and cost?

A. We all paid—they paid their share and I paid mine.

Q. Well, now, did the defendant, Dewey Henry Womble, pay the expense of himself and Dewel Kathleen Womble?

A. Well, I don't know for that.

Q. Well, how did you arrange your meals and gasoline and various expenses of your trip?

A. Dewey generally paid for that. [11]

Q. He paid for that? A. Yes.

Q. And it was your automobile, is that correct?

A. Yes.

Q. And he would buy gasoline en route, meals and lodging, things of that nature?

Mr. Wyatt: I object to that as leading, if the Court please.

The Court: Yes, it is somewhat leading.

Cross Examination

Q. Now, on the matter of expenses of the journey, it is a fact, is it not, that upon leaving Louisville that Kathleen Womble had a considerable sum of money of her own? A. I didn't know

Q. It is true, isn't it, that she paid you independently for her portion of the cost?

A. She did.

Q. She paid you independently, didn't she?

A. Yes.

Q. And when you would have meals along the way, isn't it a fact, that the three of you would pool your resources and pay for those meals?

A. That is right.

Q. Each one contributing his or her share, isn't that true? A. That is right.

Redirect Examination

Mr. O'Hara: Q. Now, Mr. Culp, this money you advanced, or loaned back in Ludington, Michigan, $500 of that you actually posted as a bail bond for Womble, who was in trouble with violation of some Michigan law back there, isn't that true?

A. That is right.

Q. And it was—some $500 of it at least was for that purpose and was given directly into the Registry of the Court, wasn't it? A. That is right.

Q. As a bond, bail, in other words, so they could both get out of jail? A. That is right.

Q. And anything over and above that, the balance, was a result of small—an accumulation of small loans made to Womble from time to time, isn't that right? A. That is right. [12]

Q. Now, on the trip out here and during the journey through these various places, and various states, it was Womble's promise to either give you some money to share the expense or to pay it himself, isn't that right?

Mr. Wyatt: I object to that as leading and suggestive.

The Court: It is leading.

Mr. O'Hara: I am merely going into the matter on redirect that counsel went into on cross.

Q. At any rate, that was the arrangement that Womble would either give you the money or pay the bills himself?

Mr. Wyatt: Same objection, if the Court please, leading and suggestive.

The Court: You may ask him what the arrangement was.

Mr. O'Hara: Q. Well, the arrangement on the matter of trip expenses were shared between you and Womble, isn't that right?

Mr. Wyatt: Same objection, leading and suggestive.

Mr. O'Hara: Q. Well, were they?

A. As far as I know.

Recross Examination

Mr. Wyatt: Q. Now, Mr. Culp, you have given us two different accounts of the manner in which the expenses of the trip were cared for. I believe you told me on cross-examination that Kathleen Womble gave you money independently to cover a portion of the cost of her transportation.

A. On some occasions she did; we all had our money together.

Q. I believe you also told me that the three of you pooled—each contributed his or her share and formed a pool for the expenses of the trip, is that right? A. That is right.

Q. So that it is not the fact that the cost of

transporting Kathleen Womble was covered by contributions from you and Dewey Womble only?

A. I don't think so; I don't know anything about the money proposition any more than we all paid our way through.

Q. Paid your own way?

A. We all went broke the same time. [13]

Redirect Examination

Mr. O'Hara: Q. Now, on this matter of expenses, Mr. Culp, just tell us exactly what happened. Did or did not Womble at times pay for things or give you the money to pay for things, gas or oil or meals or lodging, whatever it might be, en route? Did he or did he not at times give you some money or pay them himself?

A. Well, he usually done the paying. We never all each paid our own bills. We always paid as we went along.

Q. All right. Now, he had work in St. Louis, I think both of you had worked there some place in East St. Louis, is that true, or was it Louisville?

A. Louisville.

Q. Well, he had made some money there and you had? A. That is right.

Q. Now, you used up that money coming out to the Pacific Coast, didn't you?

A. That is right.

Q. And that was money you earned and money he earned, isn't that right?

A. That is right.

Q. And I think you mentioned to Mr. Wyatt that you all went broke together?

A. That is right.

Q. So what money you had, his earnings and your earnings at Louisville went into the expenses of this trip and you ended up without any money, any of you, is that about right, or very little money, at least? A. That is right.

ASSIGNMENT OF ERROR No. 2

The Court erred in presuming an immoral purpose of the trip or journey without any evidence of an immoral or even illegal purpose prior to the completion of the trip or journey and without any evidence of previous immoral or illicit relations between the defendant and Dewel Kathleen Womble or any evidence of any previous connection of the defendant with prostitution. The only testimony covering this period of time came from the government witness, Stephen Elray Culp, whose testimony on this subject was as follows: [14]

Mr. O'Hara: Q. Mr. Culp, where do you reside? A. Blanchard, Michigan.

Q. Did you have occasion to be in the state of California during the year 1943? A. I did.

Q. And were you in the vicinity of Stockton, California? A. I was.

Q. Now, do you know a party by the name of Womble? A. Yes.

A. Dewey Henry Womble? A. Yes.

Q. And also Dewel Kathleen Womble?

A. Yes.

Q. Do you see them here in the court room today? A. Yes.

Q. Would you point them out, please?

A. The girl on the right and the man at the end of the table. (Pointing.)

Q. Referring to Dewey Henry Womble, the defendant in this case, and his daughter Dewel Kathleen Womble, is that right? A. Yes.

Q. Now, where did you first meet these two people? A. Ludington, Michigan.

Q. And when was that, approximately?

A. About February 20, 1943.

Q. And what were the circumstances of your meeting with them?

Mr. Wyatt: If the Court please, I will object on the ground that it is incompetent, irrelevant and immaterial, and too remote, in so far as this particular charge is concerned. The indictment alleges an offense committed on or about the 10th day of July, 1943, and also alleges transportation from Louisville, State of Kentucky, to California, whereas the question is directed to a time in February of 1943 and the place Michigan. Unless it is connected up I will object to it on the ground that it is incompetent, irrelevant and immaterial.

Mr. O'Hara: It is merely for the purpose of background.

The Court: Overruled. Proceed.

Mr. O'Hara: Q. What did you say the circumstances of this meeting was?

A. In a rooming house. [15]

Q. Did you room at some place that they operated? A. Yes.

Q. Now, you became acquainted with them then around the month of February, 1943, at Ludington, Michigan? A. That is right.

Q. And at that time you rented a room in a rooming house they were operating? A. Yes.

Q. Did you later have occasion to leave Ludington, Michigan, with these two people?

A. That is right.

Q. The defendant and Miss Womble?

A. That is right.

Q. And where did you go?

A. To Louisville, Kentucky.

Q. And how did you travel? A. Car.

Q. By automobile? A. Yes.

Q. Whose automobile was it? A. Mine.

Q. Did the three of you stay in Louisville for some time? A. Three weeks.

Cross Examination

Mr. Wyatt: Q. Mr. Culp, you first met the defendant and his daughter in Michigan?

A. Ludington.

Q. Ludington, and you rented a room from Mr. Womble at that place, did you? A. Yes, sir.

Q. You were employed in that city, at that time, were you? A. That is right.

Q. And Mr. Womble was apparently operating a rooming house, is that correct? A. Yes.

Q. And how long did you rent a room from him before the three of you journeyed on to Kentucky?

A. Oh, probably three months.

Q. And it was then decided among the three of you to go to Kentucky. Did you agree upon a destination first? A. Yes.

Q. Then you went to Louisville, Kentucky?

A. That is right.

Q. And in Louisville did the three of you live together? A. We had an apartment.

Q. The three of you occupied an apartment, is that correct? A. Yes. [16]

Q. Were you employed while you were in Louisville? A. Yes, sir.

Q. What was the nature of your employment?

A. Boilermaker.

Q. Was Dewey Womble employed in Kentucky?

A. That is right.

Q. In the same employment, boilermaker?

A. That is right.

Q. Were you a member of the Union, the Boilermaker's Union, at that time?

A. That is right.

Q. And you held a card?

A. That is right.

Q. And do you know whether or not Dewey Womble was a member and holder of a card at that time? A. He was.

Q. Did you both work in the same plant?

A. Yes.

Q. Who kept house for you and prepared the meals? A. His daughter.

ASSIGNMENT OF ERROR No. 3

The court erred in assuming the purpose of the trip or journey to have been for prostitution or other immoral purposes from the mere fact that the defendant and Dewel Kathleen Womble journeyed together from one state to another particularly in view of the evidence of the United States witness, Stephen Elray Culp, the only witness on this subject who testified as follows:

Q. Now, did you leave Louisville with these two people, the defendant and Miss Womble?

A. Yes, sir.

Q. And where did you travel to?

A. St. Louis, Missouri.

Q. Now, was your travel more or less continuous until you reached the Pacific Coast, or did you stop off at places? A. We stopped.

Q. You went to St. Louis, and from there where did you go? A. Salt Lake City.

Q. And from Salt Lake, where?

A. Walla Walla, Washington.

Q. And from there you proceeded on where?

A. San Francisco.

Q. And from San Francisco to where?

A. Stockton.

Q. All right. Now, this journey that you have just related, [17] these various places, there were present on the journey yourself, Dewey Womble, the defendant, and Dewel Kathleen Womble, is that correct? A. That is right.

Cross Examination

Mr. Wyatt: Q. Mr. Culp, you first met the defendant and his daughter in Michigan?

A. Ludington.

Q. Ludington, and you rented a room from Mr. Womble at that place, did you? A. Yes, sir.

Q. You were employed in that city, at that time, were you? A. That is right.

Q. And Mr. Womble was apparently operating a rooming house, is that correct? A. Yes.

Q. And how long did you rent a room from him before the three of you journeyed on to Kentucky?

A. Oh, probably three months.

Q. And it was then decided among the three of you to go to Kentucky. Did you agree upon a destination first? A. Yes.

Q. Then you went to Louisville, Kentucky?

A. That is right.

Q. And in Louisville did the three of you live together? A. We had an apartment.

Q. The three of you occupied an apartment, is that correct? A. Yes.

Q. Were you employed while you were in Louisville? A. Yes, sir.

Q. What was the nature of your employment?

A. Boilermaker.

Q. Was Dewey Womble employed in Kentucky?

A. That is right.

Q. In the same employment, boilermaker?

A. That is right.

Q. Were you a member of the Union, the Boilermaker's Union, at that time?

A. That is right.

Q. And you held a card? A. That is right.

Q. And do you know whether or not Dewey Womble was a member and holder of a card at that time? A. He was.

Q. Did you both work in the same plant?

A. Yes. [18]

Q. Who kept house for you and prepared the meals? A. His daughter.

Q. What were the circumstances surrounding the decision to leave Louisville and go elsewhere?

A. Well, we weren't satisfied with the job.

Q. And you both quit your job there, did you?

A. Yes, we did.

Q. And did you have a discussion as to what your future plan would be? A. Yes, we did.

Q. And who was involved in that discussion?

A. Dewey and myself.

Q. Just the two of you? A. Yes.

Q. And what did you decide?

A. To go to St. Louis.

Q. For what purpose?

A. For boilermaker.

Q. For work? A. For work.

Q. As boilermakers? A. Yes.

Q. And was there any discussion relative to his daughter accompanying you?

A. Not exactly. How do you mean?

Q. I mean was her name mentioned, was it decided—did you decide between you that she would go along also? A. Yes.

Q. So that she did accompany you to St. Louis?

A. That is right.

Q. And you had discussed the matter with the defendant before leaving Louisville, and your purpose, the announced purpose of going to St. Louis was to obtain other employment as boilermakers?

A. That is right.

Q. And it is East St. Louis, that is where you went? A. That is right.

Q. And you did go to East St. Louis?

A. That is right.

Q. And when you got there what did you do?

A. We went out and looked the job over and we thought there wasn't working hours enough so we could make good enough, so we decided to go to Salt Lake City.

Q. The job you looked over was at Wood River, Illinois, was it? [19] A. That is right.

Q. And in order to get to work at Wood River it was necessary for you to deal through the Union at East St. Louis? A. That is right.

Q. And you did call at the Union in East St. Louis? A. That is right.

Q. And the defendant, Womble, did also?

A. That is right.

Q. And you both went out to the job at Wood River? A. That is right.

Q. And you felt the working conditions were not what you wanted? A. That is right.

Q. And you then had a discussion?

The Court: Is this material?

Mr. Wyatt: Yes, sir, your Honor, I believe it is.

The Court: In what respect?

Mr. Wyatt: I believe the very foundation of a charge of this kind is the purpose and intent of the journey and the intent on the part of the defendant to carry any person under the White Slave Act, to transport her for immoral purposes must have been formed before the commencement of such transportation or at some point en route and before entry into the state of final destination, and I am pointing out that the intent on leaving Louisville, the purpose of the trip, was to find employment. Upon going to East St. Louis and upon leaving there, I am going to see what their intent was.

The Court: Proceed.

Mr. Wyatt: Q. Did you have a discussion on your plans on leaving East St. Louis?

A. Yes, sir.

Q. And what was your conclusion?

A. To go to Salt Lake City.

Q. For what purpose?

A. There was a big job going on there at Provo.

Q. Provo, Utah? A. Yes. [20]

Q. And did you go to Salt Lake and Provo?

A. Yes, we did.

Q. And did you go—did you make your inquiries regarding *my* job at Salt Lake and Provo?

A. Yes.

Q. Did you go to the Union headquarters for that purpose?

A. Yes, we had to go to Salt Lake City, through the Union.

Q. And what situation did you find there with respect to jobs?

A. They were laying off boilermakers at that time.

Q. Did you get any information which caused you to go to any other place for work?

A. We did.

Q. And what was that?

A. They told us there was a job starting at Walla Walla, Washington.

Q. Is that Pasco you have in mind?

A. Or Pasco.

Q. And then did you discuss the matter of going to Pasco with the defendant?

A. That is right, I did.

Q. And did you go to Pasco, Washington?

A. Yes.

Q. And what were the conditions there?

A. Well, they weren't far enough along with the job; they weren't hiring boilermakers yet.

Q. And then did you have some further discussion as to destination? A. Yes, we did.

Q. And what was the result of that, what did you decide upon?

A. We decided to go to San Francisco and work in the shipyard.

Q. And did you go to San Francisco?

A. Yes, we did.

Q. And did you make inquiries regarding jobs in San Francisco or did you go to Stockton without doing that?

A. We looked up the jobs there and they weren't paying enough for boilermakers.

Q. And then you decided to go to Stockton?

A. That is right.

Q. Now, then before you left Louisville was there ever any discussion either between you and the defendant or between the defendant and his daughter regarding any purpose in taking her along on this trip? A. There was not.

Q. You didn't hear any? A. No. [21]

Q. You didn't hear anything suggested by the defendant that he was to place her in a house of prostitution? A. I did not.

Q. Anywhere en route on that trip did you hear any such discussion? A. No.

Q. Did you ever hear or observe anything that would indicate that the purpose of the trip was anything other than to find employment? A. No.

Q. Now, how long did you stay in Stockton?

A. I was there one night, I think, and part of a day.

Q. And part of a day? Did you make inquiries regarding boilermaker work in Stockton?

A. I did.

Q. And you went to the Union Hall in Stockton for that purpose? A. That is right.

Q. You were accompanied there by the defendant, Dewey Womble? A. That is right.

Q. In other words, when you arrived in Stockton you both went to the Union Hall and sought employment? A. That is right.

Q. What was the situation in respect to employment in your particular trade at that time?

A. I didn't get that.

Q. Well, was there work available in your trade?

A. Yes.

Q. She did. Just a moment, please. Just in conclusion, you never at any time heard Dewey Womble assert that the purpose of his trip from Kentucky to California was for any purpose other than employment, did you? A. That is right.

Mr. Wyatt: That is all.

Q. And who made the arrangements, or rather, who suggested the trip out to the Coast here, to East St. Louis, Denver, and so on?

Mr. Wyatt: Mr. O'Hara, if the Court please, is this again direct?

A. Well, we kind of talked it over. I had a son in San Francisco that I was kind of anxious to see and as long as was looking for work we naturally headed this way.

Mr. O'Hara: That is all. [22]

ASSIGNMENT OF ERROR No. 4

The Court erred in presuming that the intent or purpose of the journey was shown by alleged activities of Dewel Kathleen Womble and Dewey Womble a considerable time after their arrival at their final destination.

Testimony was introduced to show that some three weeks or more after defendant's arrival in Stockton, California, Dewel Kathleen Womble rented a room at the New England Rooms but it

was not shown that the defendant had any knowledge of this fact until after her arrest on August 5, 1943. On the contrary the government witness, Joseph Hayworth, operator of the New England rooms testified that he first saw the defendant after the arrest of Dewel Kathleen Womble when he came to the New England Rooms and "wanted to know what she had done".

The government also placed Tiny Avila on the stand and she testified that in September, October and November of 1943 she operated a house of prostitution in Isleton, California and that in October (three months after the arrival of defendant and Dewel Kathleen Womble) a girl she identified as Dewel Kathleen Womble went to work for her. That when she reported for work she was accompanied by two men, one of wohm somewhat resembled the defendant, but whom she could not identify with certainty. Her testimony along this line was as follows:

Q. Who was she accompanied by when she came?

A. By a man, but I didn't see the man because they were out in the car.

Q. Didn't you see the man at all?

A. Not very good, I just took a slightly look at the man.

Q. Well, do you see him here in the court room, or a man that might look like him?

A. The man over there at the table next to Mr. Wyatt. I can't swear it is him.

Q. The defendant in this case, Dewey Womble?

A. Yes, but I can't swear. [23]

Q. And you saw her in the car? A. Yes.

Q. And did you say there were two men in the car?

A. Well, one was in the inside of the car, that was sitting in the front, and there was another gentleman talking on the other side of car, on the outside.

Q. Talking on the outside?

A. That is right, on the outside of the car.

Q. On the outside of the car?

A. That is right.

Q. And you didn't particularly notice either one of them, did you?

A. No, just like it happened I took a glance and then I went right in.

Q. And that was probably in October of 1943, was it? A. Something like that.

Q. Something like that. And when was the next time anybody ever asked you if you saw any such men?

A. Well, I think it was a couple of weeks after that.

Q. Couple of weeks after that?

A. Couple of months, something like that, I really can't remember when it was.

Q. At first you told them you didn't remember, didn't you? A. When I seen who?

Q. Whether or not you saw any men at the time. When you were first asked about this you didn't tell them you seen any men?

A. You mean when they first questioned me?

Q. Yes. A. Yes, I told them.

Q. Yes.

A. They asked me if I had known any phone calls or anything like that so I told them.

Q. And at that time you didn't describe the man, did you, or men?

A. I told them that I didn't take a good look at the men, just like I say right now, I can't swear that is the man.

Q. Did you attempt to describe the men for them when they asked you about the men? A. No.

Q. You didn't even try? A. No. [24]

Q. You didn't tell them whether the men you saw were large or small, or fat or thin?

A. Well, I did tell them that, but I couldn't describe them because I didn't take a good look because when I went over there the only picture I recognized was Helen's picture because I had seen her.

Q. But you don't want the Court to believe that you can identify this man as being one of the two men on the truck?

A. Well, just like I saw, I can't swear, I am saying that, I can't swear it is the man, I could be mistaken.

Q. You don't even say it was the man, do you?

A. Well, I say there was a man but I can't say it was him.

Q. There was a man but you can't say it was him? A. That is right.

Mr. Wyatt: That is all.

Redirect Examination

Mr. O'Hara: Q. However, this defendant here resembles the man?

A. He does resemble him by the side.

Q. By the what, just to clarify that?

A. By the side.

The United States then produced Sally Mason as a witness and she testified that during the months of September and October and up to December, 1943 she operated a house of prostitution in Isleton, California. She said that during the first part of September, 1943 a man whom she identified as the defendant came to her and asked if she could use a girl. That she told him that she could not use a girl just then but could in two or three days. She stated that she did not see the defendant again but that a few days later Dewel Kathleen Womble came to her place of business alone and was given a job as a prostitute.

ASSIGNMENT OF ERROR No. 5

The Court erred in presuming that the mere registration by some person at the Hotel Wolf in Stockton, California on July 8, 1943 as Mr. and Mrs. John Robertson of Louisville, Kentucky, and [25] the subsequent entering and leaving of said hotel by the defendant and Dewel Kathleen Womble constituted debauchery and indicated the journey to have been for an immoral purpose.

The assistant manager of said hotel testified that he was on duty on July 8, 1943 when someone registered for room 516 under the name of Mr. & Mr.

John Robertson of Louisville, Kentucky. He testified that he had no independent recollection of the persons indicated as Mr. & Mrs. John Robertson and that all of his testimony was based upon the card record maintained by the hotel.

The United States then presented the testimony of Arthur Ernest Miller who said that during the month of July of 1943 he was night clerk at the Wolf Hotel and that he recognized the defendant and Dewel Kathleen Womble as the persons who stayed at the Wolf Hotel from July 8th to July 13th, 1943 under the name of Mr. and Mrs. Robertson. He stated the hotel had one hundred and twenty rooms and that his testimony that the defendant and Dewel Kathleen Womble were the persons who occupied a room in the hotel was based entirely upon seeing them go in and out of the hotel.

ASSIGNMENT OF ERROR No. 6

The Court erred in presuming that Dewel Kathleen Womble engaged in any prostitution in Stockton prior to September 23, 1943 or at any time either with or without the knowledge of the defendant for there is no evidence of such prostitution whatever. The United States witness Domingo Tasani testified that he had intercourse with Dewel Kathleen Womble at the New England Rooms in Stockton during July, 1943 but there is no testimony that he paid anything of value.

Neither of the United States witnesses, Charles W. Potter or Mervin Garibotto, Stockton police officers, testified to prostitution. The closest ap-

proach was the testimony of Officer Potter, [26] using the records of the Stockton Police Department for reference, that Dewel Kathleen Womble was arrested on August 6, 1943 in Stockton under the name of Ethel Robertson on a charge of vagrancy and that the police records failed to show any disposition of the case. Officer Garibotto merely testified that he arrested her on November 16, 1943 as a fugitive after she had jumped bail after the first arrest for vagrancy.

ASSIGNMENT OF ERROR No. 7

The Court erred in giving any weight or consideration whatsoever to the testimony of the United States witness Sally Mason that the defendant came to her in the first part of September and asked if she could use another girl and that Dewel Kathleen Womble came to work for her two or three days later, for the testimony of United States witness, Charles W. Potter, testifying from the Stockton Police Department records was as follows:

Mr. O'Hara: Q. Well, let me ask you this, Mr. Potter: She was in custody of the Stockton Police Department from August 6th to September 23rd, 1943, is that correct, in actual custody?

A. Correct.

ASSIGNMENT OF ERROR No. 8

The Court erred in denying defendant's motion to strike out the answer of the United States witness Tasani to the question asked of him as follows:

Q. Now, you contacted a venereal disease following your intercourse with her—you got sick?

A. Yes.

Mr. Wyatt: I will object, certainly, as leading and suggestive.

The Court: Yes, that is leading.

Mr. O'Hara: Well, I am going to have difficulty with this witness because it is hard to make him understand.

Q. After you find you have venereal disease what did you do?

Mr. Wyatt: Object, on the grounds it assumes something not [27] in evidence. I believe the previous objection was sustained and there was no answer in the record.

Mr. O'Hara: I believe that was an answer in the record, he said yes.

Mr. Wyatt: I ask that be stricken.

The Court: Denied. Proceed.

1. The answer should have been stricken because it was not properly in the record. The original objection was sustained and the answer entered the record only because it was given during the making of the objection or during the ruling by the Court. The original ruling indicated it was improper and should have been stricken.

ASSIGNMENT OF ERROR No. 9

The Court erred in sustaining objection of counsel for plaintiff on grounds it was incompetent, irrelevant and immaterial to question asked of witness Sally Mason as follows:

Q. You recall the date her doctor's certificate was issued?

The reasons why such evidence should have been admitted are:

1. It was competent to test the recollection of the witness.

2. It was competent to test the credibility of the witness as to the time Dewel Kathleen Womble was alleged to have been employed by her.

3. It went to the credibility of a previous witness for the government that Dewel Kathleen Womble was suffering from a venereal disease on July 29, 1943.

ASSIGNMENT OF ERROR No. 10

The Court erred in finding the defendant guilty.

The error of the Court was briefly as follows:

1. There was no evidence to support the charge that the defendant transported Dewel Kathleen Womble from Kentucky to California.

2. There was no evidence to support the charge that said [28] woman was so transported by said defendant with the intent and purpose on the part of said defendant that said woman should practice prostitution and engage in other immoral practices.

ASSIGNMENT OF ERROR No. 11

The Court erred in refusing deefndant a new trial on the grounds set forth in the written motion filed.

ASSIGNMENT OF ERROR No. 12

The Court erred in granting plaintiff's motion to reopen plaintiff's case after Counsel for plaintiff had rested and defendant's counsel had argued a motion to dismiss.

Wherefore defendant, Dewey Henry Womble, prays that by reason of the foregoing errors, the judgment entered in the trial Court adjudging him guilty as charged in the indictment in this cause be reversed.

Dated: July 14, 1944.

HAROLD WYATT,
Attorney for defendant and appellant.

[Endorsed]: Filed July 15, 1944. [29]

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be it remembered that heretofore the Grand Jury of the United States in and for the Northern District of California, Northern Division, did find and return to and before the above entitled Court on April 12, 1944, its indictment against the defendant, Dewey Henry Womble, which indictment was and is as follows:

In the April 1944 term of said Division of said District Court the Grand Jurors thereof, on their oaths present: That

DEWEY HENRY WOMBLE

hereinafter called the defendant, heretofore, to-wit, on or about the 10th day of July, 1943, at Louisville, in the State of Kentucky, did knowingly, wilfully, unlawfully and feloniously transport, cause to be transported, and assist in transporting in interstate commerce, a woman, to-wit, one Dewel Kathleen Womble, from Louisville, in the State of Kentucky, aforesaid, to the City of Stockton, in the County of San Joaquin, within the Northern Division of the Northern District of California, and [30] within the jurisdiction of this Court then and there being, by means of a certain automobile running over the public highways of the United States and of the States of Kentucky and California; that said woman was so transported as aforesaid by said defendant with intent and purpose on the part of said defendant that said woman should practice prostitution and engage in other immoral practices. T. 18 USCA, 398)

FRANK J. HENNESSY,
United States Attorney,

By .....
Assistant United States Attorney.

That thereafter and on the 14th day of April, 1944, the defendant, upon being arraigned in person, entered a plea of Not Guilty to said indictment and did in open Court orally waive trial by jury.

Thereafter on the 1st day of June, 1944, the above cause came on for trial before the Honorable Mar-

tin I. Welsh, one of the Judges of said Court, sitting without a jury, Thomas O'Hara, Assistant United States Attorney, appearing as counsel for the United States and Harold Wyatt, appearing as counsel for the defendant.

Whereupon the United States offered and introduced the following evidence and exhibits of evidence, and the following evidence was received or rejected, and objections and motions were made and rulings of the Court were entered as follows, to wit:

STEPHEN ELRAY CULP

called as a witness for plaintiff, being duly sworn, testified as follows:

I reside in Blanchard, Michigan. I am acquainted with Dewey Henry Womble and his daughter Dewel Kathleen Womble, having first met them in Ludington, Michigan about February 20, 1943. They [31] operated a rooming house in Ludington and I rented a room from them. I later left Ludington with the defendant and Miss Womble and went to Louisville, Kentucky, where we remained about three weeks. I then left Louisville with these two people, the defendant and Miss Womble and we traveled in my automobile to St. Louis, Missouri. From St. Louis we went to Salt Lake City, from Salt Lake City to Walla Walla, Washington, from there to San Francisco and from San Francisco to Stockton. We traveled in my automobile and we all paid the ex-

(Testimony of Stephen Elray Culp.)

penses, they paid their share and I paid mine. Dewey Womble generally paid for our meals, gasoline and various expenses of our trip. We arrived in Stockton in July, 1943 and we first stayed at the Traveler's Hotel. I left the other two in Stockton and went on to Modesto, but I returned to Stockton several times because Womble and his daughter owed me money and I was seeking repayment. I usually found Womble at the hotel and on one occasion I asked him where the girl was and he told me she was at the New England rooming house. He told me she was working but he did not say where. I visited Miss Womble once at the New England rooms and later at the jail. I do not know of my own knowledge whether or not the New England rooms was a place of prostitution.

Cross Examination

I knew Womble and his daughter about three months before we journeyed on to Kentucky. In Louisville the three of us lived together in an apartment where Dewel Kathleen Womble kept house for us while Womble and I, both members of the boilermakers union, worked in the same plant at our trade of boilermakers. We were not satisfied with our jobs so we quit and after a discussion decided to go to St. Louis for the purpose of obtaining work as boilermakers. We did go to East St. Louis and went out to Wood River, Illinois to look the job over and felt that they were not working long enough hours for us to make enough money so after

(Testimony of Stephen Elray Culp.)

[32] further discussion we decided to go to Salt Lake City to see about getting work on a big job going on at Provo, Utah. We went to the Union Headquarters in Salt Lake City and learned that they were laying off boiler makers at that time. The Union officials told us there was a big job starting at Pasco, Washington, so after a discussion we decided to go there. On arrival at Pasco we found that they weren't far enough along with the job and weren't hiring boilermakers yet. We decided to go to San Francisco and work in the shipyard, but upon arriving there found they were not paying enough for boilermakers so we went on to Stockton. The day after our arrival Dewey Womble and I went to the Union Hall seeking employment as boilermakers.

I stayed in Stockton one night and part of the next day, then went to Modesto. About two weeks later I returned to Stockton to see the Wombles and inquired for Dewey Womble at the Traveler's Hotel and found that he was out working. I returned to Stockton several more times and on one occasion Dewey Womble told me that I could locate his daughter at the New England Rooms. He told me where to find her, where it (New England Rooms) was located. He did not tell me that she was working there.

Before we left Louisville, I did not engage in any discussion, nor did I hear any discussion regarding any purpose in taking Miss Womble on the trip nor did I hear it suggested either at that time or en

(Testimony of Stephen Elray Culp.)

route on the trip that she was to engage in prostitution. I never heard or observed anything that would indicate the purpose of the trip was anything other than to find employment. On the matter of the expenses of the journey, Miss Womble paid me independently for her portion of the cost and when we would have meals along the way the three of us would pool our resources and pay for the meals. Of the [33] money I loaned to the Wombles $500 was cash I paid into the Registry of the Court in Michigan to bail them both out of jail. Any other money owing to me was the result of an accumulation of small loans made to Womble from time to time.

Redirect Examination

As far as I know the trip expenses were shared between Womble and me.

Recross Examination

On some occasions Dewel Kathleen Womble gave me money to cover her portion of the transportation cost; we all had our money together. I don't know anything about the money proposition any more than we all paid our way through. We all went broke the same time.

Redirect Examination

Both Womble and I worked in Louisville and this money went toward the expenses of the trip. We all went broke or nearly broke together.

(Testimony of Stephen Elray Culp.)

Recross Examination

The money Dewel Kathleen Womble had when she left Louisville was also used.

Q. Well, as far as you know Kathleen Womble didn't have any money, did she?

A. I wouldn't know anything about that.

Q. To enable those people to get out of jail in Michigan you put up $500 cash bond for them, did you? A. That is right.

Q. And there was some money earned by Womble in Louisville and some earned by yourself, wasn't there? A. That is right.

Q. And that is the money you used on the trip and exhausted on the trip? A. That is right.

DOMINGO TASANI

called as a witness for the plaintiff, being duly sworn, testified as follows:

I live in Stockton. In the month of July, 1943, I went to the New England rooms on Main Street, Stockton and had [34] sexual relationship with Dewel Kathleen Womble at that place.

Whereupon plaintiff's counsel asked: "Now, you contacted a venereal disease following your intercourse with her, you got sick?"

To which defendant's counsel objected as leading, which objection the Court sustained. However during the objection or ruling the witness answered "yes".

(Testimony of Domingo Tasani.)

Whereupon Plaintiff's counsel asked:

"After you find you have venereal disease, what did you do?"

To which defendant's counsel objected as assuming something not in evidence. Plaintiff's counsel then called attention to the fact that the answer was in the record and defendant's counsel moved that it be stricken, which motion the Court denied.

Whereupon the witness testified that he went to the clinic [35] when he got sick and that the police came to the clinic and questioned him.

TINY AVILA,

called as a witness for plaintiff, being duly sworn, testified as follows:

I live in Isleton and I lived there in September, October, and November, 1943 during which time I ran the Riverside Hotel, a house of prostitution. I first saw Dewel Kathleen Womble one night when she came to my place to ask for a job. I next saw her when she came to my place to go to work at which time she was accompanied by a man at whom I only glanced slightely. The defendant might look like him but I didn't see the man very good and I can't swear it is him. The witness testified the girl worked at her place two days but did not state the nature of the work.

(Testimony of Tiny Avila.)

Cross Examination

The witness stated the events she testified to occurred in something like October, 1943. That she knew there was a man with Miss Womble, but that she couldn't say it was the defendant.

Redirect Examination

The defendant resembles the man I saw.

SALLY MASON,

called as a witness for plaintiff, being duly sworn, testified as follows:

During September, October, November and December, 1943, I had a place of business in Isleton which was known as Sally's Cafe. It was a bar and place of prostitution. In the first part of September the defendant Dewey Henry Womble came to me, told me his name was Ray and asked if I could use another girl and I told him I just couldn't use her right away. This was the only time I saw or heard from the defendant. About two or three days later Dewel Kathleen Womble came to my place alone and went to work for me as a prostitute. She worked about two weeks and made between three [36] and five hundred dollars a week.

Cross Examination

Dewel Kathleen Womble went to work for me the first part or about the middle of September, 1943. She worked about two weeks. It was still September when she quit.

B. E. HART

called as a witness for plaintiff, being duly sworn, testified, as follows:

I am general manager of the Delta Telephone and Telegraph Company at Courtland. This company also services Isleton.

This witness identified a toll slip as the telephone company record of a telephone call made on September 15, 1943 by a person named Ray to Isleton telephone number 2361. That number 2361 was listed as Sally's Cafe.

Whereupon counsel for plaintiff introduced said toll slip as Government's Exhibit No. 1.

This witness then identified a toll slip as indicating a call placed on September 15, 1943 from Isleton 2361 by Sally Mason to Stockton 29533, Ray which call was not completed. Counsel for plaintiff introduced this toll slip as Government's Exhibit No. 2.

Cross Examination

This witness testified that the incompleted call from Isleton to Stockton shown by Government's Exhibit No. 2 was placed before the completed call from Stockton to Isleton which is shown by the slip marked Government's Exhibit No. 1, and that the call from Stockton to Isleton was a collect call.

(Testimony of B. E. Hart.)

The writing "Ray" and "Womlbe" and the pencil printing "Wombo" was on Exhibit No. 1, when taken by me from the Telephone Company files.

HERBERT CHESTER GRAHAM [37]

called as a witness for plaintiff, being duly sworn, testified as follows:

I am assistant Manager of the Hotel Wolf at Stockton and was such in the month of July, 1943.

This witness then was shown a card which he identified as a [38] registration card belonging to the Hotel Wold. Counsel for plaintiff had this marked plaintiff's Exhibit No. 3 for identification and the witness used it to testify as follows:

This is the registration card of a Mr. and Mrs. John Robertson of Louisville, Kentucky. They were assigned to Room 516 on July 8, 1943. They occupied this room for two days and then were transferred to a room with bath which they occupied for the succeeding two days and checked out on the 12th.

Cross Examination

I have no independent recollection of the persons indicated as Mr. and Mrs. John Robertson. My testimony is simply from the record and when I have used the plural it is because the charge is made for double occupancy.

ARTHUR ERNEST MILLER,

called as a witness for plaintiff, being duly sworn, testified as follows:

I am the night clerk at the Wolf Hotel in Stockton and was such during the month of July 1943. I am familiar with the record designated Government's Exhibit 3 for identification and I recognize the defendant and Dewel Kathleen Womble as the parties who stayed at the Wolf Hotel, Stockton, California, on those days under the name of Mr. and Mrs. Robertson.

Whereupon counsel for plaintiff introduced Exhibit No. 3 in evidence for all purposes.

Cross Examination

The Wolf Hotel has one hundred and twenty rooms. My testimony that Dewel Kathleen Womble and Dewey Henry Womble were the occupants of room 516 and 412 is based entirely on seeing them going in and out of the hotel the four days which I distinctly remember.

HAROLD BAKER,

called as a witness for plaintiff, being duly sworn, testified [39] as follows:

I am the manager of the Traveler's Hotel in Stockton, California. I have the Traveler's Hotel records for the month of July, 1943 which includes a card record of the registration of a Ray Womble. This card indicates that Stephen Culp originally

(Testimony of Harold Baker.)

rented this room and then Dewey Womble came in on July 10, 1943 and Culp left.

It was then stipulated by and between counsel for both parties that Dewey Henry Womble occupied room 402 of the Traveler's Hotel, Stockton, California on September 12th, 14th, 16th and 29th and October 21st, 25th, 26th and November 6th, 1943.

Whereupon the witness further testified: I keep a record of telephone calls which are placed from the various rooms of the Traveler's Hotel and go through the hotel switchboard. This record shows the following calls from room 402. On September 12th to 2361, Isleton; September 14th to 2361, Isleton; September 16th to 2361, Isleton; September 29 to Isleton 2631; October 21st a local call to 2-0732; October 25th three local calls, one of which was to 3-0732; October 26th three local calls, two of which were to 3-0732. On November 6th the defendant was occupying room 410 and I have a record of a call from this room to Isleton 2381.

Cross Examination

I was on duty when Mr. Womble first came in with another man. He himself did not register in back, but he registered in *from for* me. Shortly thereafter he inquired about a room for his daughter.

Redirect Examination

Redirect examination was disposed of by a stipulation of counsel that the defendant Womble occupied room 415 on September 8, 1943.

TINY AVILA,

recalled as a witness for the plaintiff and direct examination [40] resumed. She testified as follows:

On November 6, 1943 the telephone number of my place, the Riverside Hotel was Isleton 2381.

ALFRED O. LEWIS,

called as a witness for the plaintiff, being duly sworn, testified as follows:

I am Supervising Special Agent for the Pacific Telephone and Telegraph Company. The Stockton telephone number 2-9533 is listed in the name of Panama Inn at 302 East Market Street in Stockton, California. It was stipulated by and between respective counsel that the Stockton telephone number 3-0732 is listed in the name of New England rooms at 29½ E. Main Street, Stockton, California. Whereupon this witness further testified as follows:

Q. Now, do you have with you a record of telephone calls from Stockton 4-4537, the Traveler's Hotel in the month of September and November, 1943? A. Yes, sir.

Q. Referring you to the month—or rather, to the date of September 3rd, 1943, do you have a record of a long distance call? A. I have, yes.

Q. You are now referring to what, a record?

A. Toll tickets made out by operators who handle the call.

(Testimony of Alfred O. Lewis.)

Q. And these are a part of the official records of the Pacific Telephone and Telegraph Company?

A. That is right, yes, sir.

Q. And were taken by you pursuant to a subpoena for you to produce them in this court, is that correct? A. Yes, sir.

Q. And these are similar to what Mr. Hart of the Delta Telephone Company had, I mean similar form? A. Yes, sir.

Q. Now, that is a call (handing slip to witness) placed to Isleton 2361 on that date, is that correct?

A. Yes, sir.

Q. Referring you again to—do you have another call on September 3rd to that same number?

A. Yes, sir, 2361.

Q. Now, does that indicate who placed that call or from what [41] room it might have been placed at the calling number where the call was placed?

A. Yes, sir.

Q. What does it indicate?

A. It indicates a party by the name of Jones in hotel room 415.

Q. The name Jones?

A. That is what the name is that was given.

Q. And it is a straight call to that number, is that right? A. Sally's Cafe.

Mr. Wyatt: What date is that?

Mr. O'Hara: September 3rd.

May it please the Court, at this time I will offer in evidence the first toll ticket to Isleton 2361 on September 3rd as identified by the witness.

(Testimony of Alfred O. Lewis.)

The Court: It may be admitted.

The Clerk: United States Exhibit No. 4.

Mr. O'Hara: And then the toll ticket on September 3rd from Stockton 4-4537, room 415 to Isleton 2361.

The Court: Admitted.

The Clerk: United States Exhibit No. 5.

Mr. O'Hara: Now, referring you to the date of September 5, 1943, do you have the toll tickets indicating a call from Stockton 44—was it 536 or 537, the calling number—536, do you have a toll ticket for September 5th? A. Yes, sir.

Q. And *that* information does that ticket contain? A. To Isleton 2361.

Q. And from whom? A. It doesn't say.

Q. It does not say, and is it—was it—was the call placed to a specific person or just to a number?

A. Just to a number.

Q. Now, may I have that one, please?

A. Yes. (Witness hands document to Mr. O'Hara.)

Mr. O'Hara: At this time I will offer in evidence toll ticket referred to by the witness. [42]

The Court: Admitted.

The Clerk: United States Exhibit No. 6.

Mr. O'Hara: Now, on September 8th do you have a record of a call? A. Yes, sir.

Q. And that is from Stockton 4-4536?

A. Yes, sir.

(Testimony of Alfred O. Lewis.)

Q. To Isleton 2361? A. Yes, sir.

Mr. O'Hara: I will offer the toll ticket in evidence.

The Court: Admitted.

The Clerk: United States Exhibit No. 7.

Mr. O'Hara: Now, September 13th?

A. Yes, sir.

Q. And what does that indicate?

A. Station to station call.

Q. From the Stockton number to the Isleton number? A. Yes.

Mr. O'Hara: I offer this toll ticket in evidence also as Government's Exhibit next in order.

The Court: It may be admitted.

The Clerk: United States Exhibit No. 8.

Mr. O'Hara: Q. How about September 14th?

A. The same.

Q. Also record of a call? A. Yes.

Q. Isleton 2361? A. Yes, sir.

Q. And do you have more than one call on that date? A. Yes.

Q. If you will show me the first one, please?

A. Yes.

Mr. O'Hara: I offer that in evidence.

The Court: Admitted.

The Clerk: United States Exhibit No. 9.

Mr. O'Hara: Q. Now, the second call on that date, what does that indicate?

A. Room 402 to Isleton 2361, Ethel.

Q. Ethel at Isleton 2361? A. Yes, sir.

(Testimony of Alfred O. Lewis.)

Mr. O'Hara: I will offer that toll ticket in evidence.

The Court: Admitted.

The Clerk: United States Exhibit No. 10. [43]

Mr. O'Hara: Q. September 16th?

A. Yes, sir.

Q. And what does that indicate?

A. Station to station call.

Q. From Isleton 2361 to the same Stockton number? A. Yes, sir.

Mr. O'Hara: I offer that ticket in evidence.

The Court: Admitted.

The Clerk: United States Exhibit No. 11.

Mr. O'Hara: Q. September 29th.

A. Yes, sir.

Q. What does that indicate?

A. From a Stockton number, from Warmble to Isleton 2361, Sally.

Q. From Warmble at Stockton number to Sally at Isleton number? A. Yes, sir.

Mr. O'Hara: I ask that the toll ticket be admitted into evidence.

The Court: Admitted.

The Clerk: United States Exhibit No. 12.

Mr. O'Hara: Q. And on November 6th.

A. Yes, sir.

Q. I believe you have two calls that day?

A. 2381 Isleton, Riverside Hotel from Stockton 4-4536.

Mr. O'Hara: May that ticket be admitted?

The Court: It may be admitted.

(Testimony of Alfred O. Lewis.)

The Clerk: United States Exhibit No. 13.

Mr. O'Hara: Q. And the second call on November 6th, what does that read?

A. 4-4536, Womble, room 410, Isleton 2361, I can't make that out, M-a-d-u-i-m, is that what you say it is?

Q. Do you think it is Madam?

A. I wouldn't say that.

Q. At any rate it is Womble room 410 at Stockton 4-4536 to Isleton 2361? A. That is right.

Mr. O'Hara: I offer that in evidence.

The Court: Admitted.

The Clerk: United States Exhibit No. 14. [44]

JOSEPH HAYWORTH,

called as a witness for the plaintiff, being duly sworn, testified as follows:

I reside in Stockton and my wife and I operate the New England rooms at 29½ East Main Street. I recognize Dewel Kathleen Womble as the girl I knew as Ethel Robertson who stayed at my place for about twelve days. I also know Dewey Henry Womble. I knew him as Ray and I first saw him when he came to the New England rooms a few hours after Dewel Kathleen Womble had been arrested. He wanted to know what she had done and if he could do anything for her.

(Testimony of Joseph Hayworth.)

Cross Examination

The defendant never came to me and asked to rent a room for himself and any other person.

NORMAN V. SULLIVAN,

called as a witness for the plaintiff, being duly sworn testified as follows:

I am a special agent, Federal Bureau of Investigation. I know Joseph Hayworth and during the month of March I had occasion to interview him in Stockton concerning this case.

Whereupon, counsel for plaintiff asked the witness what Hayworth told him with respect to Dewel Kathleen Womble, whom he knew as Ethel Robertson, and the defendant Dewey Henry Womble being at the New England rooms.

To this question counsel for the defendant objected as hearsay and the objection was sustained.

Whereupon the Government rested and counsel for plaintiff argued at length on a motion to dismiss which was summarily dismissed.

The Court thereupon declared a five minute recess and at its expiration adjourned court until the following morning at which time counsel for plaintiff made a motion to reopen plaintiff's [45] case for the purpose of establishing a date and showing further activities of the defendant in Stockton. This motion was vigorously opposed by defendant's

counsel who contended that it was unfair to permit plaintiff to reopen its case and strengthen the weak points pointed out in argument on motion to dismiss. The Court granted the motion to reopen and the trial proceeded.

CHARLES W. POTTER,

a witness for the plaintiff, being duly sworn, testified as follows:

I am a Detective Sergeant of the Stockton Police Department and was such in the month of August, 1943. I am acquainted with Dewel Kathleen Womble and she is the person who was known to me on August 6, 1943 as Ethel Robertson. On August 6, 1943, I went to the New England rooms and took the girl from that place to the Captain of Detectives' office in the police department and we talked with her and questioned her and placed her under quarantine and booked her for investigation at the County Jail. The police record indicates she was charged with vagrancy based upon prostitution. The complaint was filed July 29, 1943 and I arrested her on August 6, 1943. The police report indicates that Domingo Tasani, San Joaquin Hotel, 29 East Market Street, Stockton, reported he contracted a venereal disease at the New England rooms July 29, 1943. She was in actual custody of the Stockton Police Department from August 6, 1943 to September 23, 1943 at which time she was

(Testimony of Charles W. Potter.)

admitted to bail. The police record does not show that her case was ever set for trial.

MERVIN GARIBOTTO,

a witness for the plaintiff, being duly sworn, testified as follows:

I am a Police Sergeant in the City of Stockton and was such during the year 1943. On November 16, 1943 I went to the Avalon Rooms in the City of Stockton, where I first saw Dewey Henry [46] Womble and asked him where his old lady was. He said, "in another room", and I knocked at the door indicated by him and it was opened by Dewel Kathleen Womble whom I knew as Ethel Robertson. I placed both Womble and Miss Womble under arrest. I arrested Dewel Kathleen Womble because I knew she had left without going to trial on a previous charge of vagrancy. I had occasion to see Womble at the Sutter Club in Stockton after he was out on bail and at that time he wanted to know what the girl was charged with, how serious the offense was, I told him she probably was charged with vagrancy. He wanted to know if he pleaded guilty if he could get leniency for the girl and a sailor named Gouldsby whom I had also arrested.

Whereupon both plaintiff and defendant rested their respective cases.

The foregoing was all the evidence offered, heard or admitted by either side in this case.

Whereupon the Court fixed Saturday, June 3, 1944, at 10:00 o'clock a. m. as the time for pronouncing judgment and did at that time orally announce in open Court that:

"I find the defendant guilty as charged."

Thereupon, and on said June 3, 1944, the Court imposed judgment and sentence as follows:

It Is Ordered and Adjudged that the defendant, having been found guilty of said offense, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of five years.

Whereupon on June 6, 1944 counsel for defendant filed written Motion for a New Trial as follows, to-wit:

MOTION FOR NEW TRIAL

Comes now the defendant Dewey Henry Womble, and moves the above entitled court to set aside the judgment heretofore rendered herein and to grant a new trial of the above entitled [47] cause, and for grounds of said motion specified:

(1) That the court has committed error in rulings on matters of law arising during the course of the trial.

(2) That the verdict and judgment are contrary to the evidence and contrary to the law.

(3) That the Court erred in considering evidence of the registry of Dewell Kathleen Womble

at the Hotel Wolf, in the City of Stockton, State of California and the subsequent activities of the defendant in connection therewith for any purpose other than a showing of the completion of the transportation alleged in the indictment and that the court particularly erred in considering said evidence as support for any allegations of other immoral practices for the reason that the indictment did not charge the defendant with a violation of section 398 of the Criminal Code based upon a separate count charging other immoral practices.

Dated: June 5, 1944.

HAROLD WYATT,
Attorney for Defendant.

Whereupon the Court denied Motion for a New Trial and defendant filed written Notice of Appeal.

That the above Bill of Exceptions contains all of the evidence, oral and documentary, and all of the proceedings relating to the trial, conviction, motions and judgment and sentence, and said defendant and appellant hereby presents the same as his Bill of Exceptions and asks that the same be allowed, signed and sealed and made a part of the record of this cause.

Dated: Sacramento, California, July 21, 1944.

HAROLD WYATT,
Attorney for Defendant and Appellant, Dewey Henry Womble.

[Endorsed]: Lodged 7/15/44.

[Endorsed]: Filed July 26, 1944. [48]

[Title of District Court and Cause.]

STIPULATION RE BILL OF EXCEPTIONS

It is hereby stipulated and agreed by and between the respective parties hereto that the foregoing Bill of Exceptions on behalf of the above named defendant and appellant, Dewey Henry Womble, upon appeal herein to the Circuit Court of Appeals in and for the Ninth Circuit, has been duly presented within the time allowed by law, and the rules and orders of this Court, duly and regularly made in this behalf, and the same is in proper form and conforms to the truth, and that it may be settled, allowed, *a*igned and authenticated by this Court as the true Bill of Exceptions herein, on behalf of said defendant and appellant, and that it may be made a part of the record in this cause.

Dated: Sacramento, California, July 21, 1944.

FRANK J. HENNESSY,
United States Attorney,
THOMAS O'HARA,
Assistant U. S. Attorney,
Attorneys for Plaintiff and Appellee.
HAROLD WYATT,
Attorney for Defendant and Appellant, Dewey Henry Womble. [49]

[Title of District Court and Cause.]

ORDER SETTLING AND ALLOWING BILL OF EXCEPTIONS AND MAKING SAME PART OF THE RECORD

The foregoing Bill of Exceptions, duly proposed by the above named appellant, Dewey Henry Womble, and duly agreed upon by the respective parties thereto, having been duly presented to the Court within the time allowed and required by law and by the rules and orders of this Court, duly and regularly made in that behalf, is hereby settled, allowed, signed and authenticated as in proper form and as conforming to the truth and is the true Bill of Exceptions herein and is hereby made a part of the record in this cause.

Dated: Sacramento, California, July 22, 1944.

MARTIN I. WELSH,
United States District Judge.

[Endorsed]: Filed July 26, 1944. [50]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 50 pages, numbered from 1 to 50, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of United States of

America vs. Dewey Henry Womble, No. 8775-Cr, as the same now remain on file and of record in this office.

I further certify that the cost of preparing and certifying the foregoing Record on Appeal is the sum of Eleven and 55/100 ($11.55) Dollars, and that the same has been paid to me by the attorney for the appellant herein.

In witness whereof, I have hereunto set my hand and the official seal of said District Court, this 1st day of August, A. D., 1944.

[Seal] C. W. CALBREATH,
Clerk.
By F. M. LAMPERT,
Deputy Clerk. [51]

[Endorsed]: No. 10811. United States Circuit Court of Appeals for the Ninth Circuit. Dewey Henry Womble, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed August 2, 1944.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

#10811

DEWEY HENRY WOMBLE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON APPEAL

The appellant above named hereby adopts as his points on appeal the Assignments of Error heretofore filed herein and appearing in the transcript of record and hereby requests that the record as certified to the above entitled court be printed in its entirety.

HAROLD WYATT,
Attorney for Appellant.

[Endorsed]: Filed Aug. 10, 1944. Paul P. O'Brien, Clerk.

No. 10811

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

DEWEY HENRY WOMBLE

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division

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PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, December 8, 1944.

Before: Garrecht, Mathews and Bone,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Harold Wyatt, counsel for appellant, and by Mr. Emmett Sewall, Assistant United States Attorney, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, December 22, 1944.

Before: Garrecht, Mathews and Bone.
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

By direction of the Court, Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk and that

a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.*

[Title of Circuit Court of Appeals and Cause.]

Upon Appeal From the District Court of the United States for the Northern District of California, Northern Division.

Before Garrecht, Mathews and Bone,
Circuit Judges.

Garrecht, Circuit Judge.

OPINION

Appellant was found guilty of the violation of Section 398, Title 18, U.S.C.A. The appellant waived jury trial and was tried by the court without a jury. Upon pronouncement of judgment, the appellant made a motion for a new trial which was denied. Appellant appeals from the judgment.

On the question of the sufficiency of the evidence this court can inquire only as to whether there is substantial evidence to support the verdict.

The evidence so considered is in brief as follows: The Appellant, Dewel Kathleen Womble, and Stephen Culp made the trip from Louisville, Kentucky to Stockton, California in Culp's automobile. Culp separated from the appellant and Dewel Kath-

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*As amended by order of January 20, 1945.

leen Womble at Stockton, California. The record shows that at no point en route did the appellant work at any gainful occupation although Culp testified that they made inquiries about employment. Appellant paid part of the expenses of the trip and, in that way, assisted in transporting Dewel Kathleen Womble from Kentucky to California.

Upon arrival in Stockton, appellant and Dewel Kathleen Womble registered at the Hotel Wolf in Stockton as Mr. and Mrs. John Robertson. The testimony shows that Dewel Kathleen Womble was known in Stockton as Ethel Robertson. This registration was for a single room. Later, Dewel Kathleen Womble was at the New England Rooms where she was arrested by the Stockton police for vagrancy based on prostitution after a report from one Tasani that he had contracted a venereal disease from her. The evidence showed that the appellant went to Sally Mason's and asked if she could use another girl. The testimony was that in a few days Dewel Kathleen Womble went to work as a prostitute at Sally's Cafe. Other witnesses testified that she worked as a prostitute at another house in Stockton.

The appellant contends that there was no evidence that in transporting Dewel Kathleen Womble he had any intent that she should practice prostitution. The law is settled that in prosecutions for violation of the White Slave Act (Title 18, U.S.C.A. §398) the jury or court may infer intent from all the circum-

stances of the evidence. Tedesco v. U.S., 118 F. 2d 737, 741; Shama v. U.S., 94 F. 2d 1. This court has decided the evidence of conduct at the end of the journey is sufficient to sustain such a conviction. Kelly v. U.S., 297 Fed. 212.

Appellant argues that the evidence does not show that Dewel Kathleen Womble practiced prostitution. The testimony was that she was arrested for vagrancy based on prostitution; that more than one witness testified to acts of prostitution. The testimony was also that the appellant inquired of one place whether they could use another girl and that he made several telephone calls to her at the different houses where she worked.

It is our opinion that all this evidence is substantial and supports the lower court's judgment.

Affirmed.

As amended by order of January 20, 1945.

[Endorsed]: Opinion. Filed Dec. 22, 1944. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10811

DEWEY HENRY WOMBLE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

JUDGMENT

Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, Northern Division and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

[Endorsed]: Filed Dec. 22, 1944. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Saturday, January 20, 1945.

Before: Garrecht, Mathews and Bone,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING AMENDMENT OF OPINION AND DENYING PETITION FOR REHEARING

By direction of the Court, Ordered that the typewritten opinion of this Court heretofore rendered in above cause be corrected pursuant to order this day filed.

Upon consideration of the petition of appellant, filed January 18, 1945, and within time allowed therefor by rule of court, for a rehearing of the above cause, and by direction of the Court, It Is Ordered that said petition be, and hereby is denied.

[Title of Circuit Court of Appeals and Cause.]

Before: Garrecht, Mathews and Bone,
Circuit Judges.

ORDER

It is hereby ordered that there be inserted the words "Culp testified" in place of the words "the appellant testified as did Culp" in line 15 of the opinion filed herein on December 23, 1944, and further that the sentence, "The appellant contradicted all the evidence and asked the court to believe that Dewel Kathleen Womble was his daughter although he had registered at the Hotel Wolf with her as Mr. and Mrs. John Robertson", beginning on line 31 of the said opinion be deleted therefrom, and further the petition for rehearing is denied.

FRANCIS A. GARRECHT
United States Circuit Judge
CLIFTON MATHEWS
United States Circuit Judge
HOMER T. BONE
United States Circuit Judge

[Endorsed]: Filed Jan. 20, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seventy-two (72) pages, numbered from and including 1 to and including 72, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 12 day of February, 1945.

[Seal] PAUL P. O'BRIEN,
Clerk

FILED
FEB 24 1945
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No. 980

DEWEY HENRY WOMBLE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
and
BRIEF IN SUPPORT THEREOF.

NATHANIAL A. BROWN,
Bank of America Building, Stockton 5, California,
Attorney for Petitioner.

HAROLD WYATT,
Belding Building, Stockton 3, California,
Of Counsel.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

DEWEY HENRY WOMBLE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

The petition of Dewey Henry Womble respectfully shows:

STATEMENT OF CASE.

In an indictment filed on April 10, 1944, in the Northern Division of the United States District Court for the Northern District of California it was charged

that the petitioner did on or about the 10th day of July, 1943, at Louisville, in the State of Kentucky, knowingly, wilfully, unlawfully and feloniously transport, cause to be transported, and assist in transporting in interstate commerce, a woman, to-wit, one Dewel Kathleen Womble from Louisville, in the State of Kentucky, to the City of Stockton in the County of San Joaquin, within the Northern Division of the Northern District of California, and within the jurisdiction of said Court then and there being, by means of a certain automobile running over the public highways of the United States and the States of Kentucky and California; that said woman was so transported as aforesaid by said petitioner with intent and purpose on the part of said petitioner that said woman should practice prostitution and engage in other immoral practices, in violation of Title 18 U.S.C.A., Section 398.

To this indictment petitioner entered a plea of not guilty. The case was thereupon tried by the Court sitting without a jury and the Court pronounced its judgment finding petitioner guilty and sentencing him to confinement in a United States penitentiary for a period of five years. On June 16, 1944 petitioner filed his notice of appeal from said judgment to the United States Circuit Court of Appeals, for the Ninth Circuit on the three grounds: (1) That the evidence was wholly insufficient to justify the judgment of guilty; (2) that the Court committed error in rulings on questions of law relating to the introduction of evidence and in connection with the permitting of the reopening

of the case by the government after it had rested; and (3) that the Court erred in accepting and considering evidence purporting to show other immoral practices in view of the failure of the indictment to set forth separate counts charging this as ground for violation of said Title 18 U.S.C.A., Section 398. Petitioner thereafter and on July 15, 1944 filed his assignments of error and bill of exceptions, settled and allowed by the Court on July 22, 1944, respective briefs were filed and the appeal was argued and submitted on December 8, 1944. On the 22nd day of December, 1944 the Circuit Court of Appeals rendered its decision affirming the judgment of said District Court. Thereafter and on January 17, 1945 petitioner filed his petition for a rehearing before said Circuit Court of Appeals, which petition was on the 20th day of January, denied and an order made deleting from the opinion of December 22, 1944, certain of the language thereof.

STATEMENT OF FACTS.

The evidence discloses that in February, 1943 appellant and his daughter, Dewel Kathleen Womble, were living in Ludington, Michigan, where they operated a rooming house. Here they first met Stephen Elray Culp who for a time rented a room from them for a period of about three weeks. These three people left Ludington for Louisville, Kentucky where they rented an apartment where the daughter cooked and kept house while the two men Womble and Culp were

employed as boilermakers in the same plant. The men were not satisfied with their jobs so they quit and after a discussion decided to leave Louisville and go to St. Louis, Missouri for the purpose of obtaining work as boilermakers. Accompanied by the daughter, Dewel Kathleen Womble, they did go to East St. Louis and then to Wood River, Illinois to look over a job and feeling that they were not working long enough hours for them to make enough money they had a further discussion and decided to go to Salt Lake City to see about getting work on a big job going on at Provo, Utah. They went to the union headquarters in Salt Lake City and learned that they were laying off boilermakers at that time. The union officials told them there was a big job starting at Pasco, Washington, so after a discussion they decided to go there. On arrival at Pasco they found that they weren't far enough along with the job to be hiring boilermakers so they decided to go to San Francisco and work in the shipyards. In San Francisco they found the pay was not high enough for boilermakers so they went on to Stockton, where the day following their arrival Womble and Culp went to the union hall seeking employment as boilermakers. It appears that there was a registration of a Mr. and Mrs. John Robertson of Louisville, Kentucky at the Hotel Wolf, Stockton, California on July 8, 1943 and that this registration for a room at said hotel continued through July 12, 1943. The night clerk at this hotel identified Dewey Henry Womble and Dewel Kathleen Womble as persons he had seen entering and leaving this hotel, containing one hundred and

twenty rooms, for the days from July 8th to 12th. It is undisputed that Culp rented a room at the Traveler's Hotel in Stockton on July 8, 1943 which room was taken over by Dewey Henry Womble on July 10, 1943 when Culp left for Modesto, California. Dewel Kathleen Womble later obtained a separate room at this hotel where she and her father continued to live for some time. On August 6, 1943, Dewel Kathleen Womble was arrested at the New England Rooms in Stockton and was held in jail from August 6th to September 23, 1943. The police record indicated that she was charged with vagrancy based upon prostitution, but no trial was had and no determination of guilt or innocence was made. The only evidence of prostitution was the testimony of Domingo Tosani that in the month of July, 1943 he went to the New England Rooms on Main Street, Stockton, and had sexual relationship with Dewel Kathleen Womble at that place. He could not fix the date, but the complaint to the police was made on July 29, 1943, twenty-one days after the arrival of Womble, his daughter and Culp in Stockton.

Sally Mason testified that during the months of September, October, November and December, 1943, she operated a place of prostitution in Isleton, California; that in the first part of September, appellant came to her, told her his name was Ray and asked if she could use another girl and that she told him she couldn't use her right away. She said that this was the only time she saw or heard from the appellant but that about two or three days later Dewel Kathleen Womble

came to her place alone and went to work for her as a prostitute. That she came to work the first part or about the middle of September, 1943, and worked about two weeks and that it was still September when she left.

Tiny Avila testified that in September, October and November, 1943 she operated a house of prostitution in Isleton, California. That she first saw Dewel Kathleen Womble one night when she came to her place alone to seek a job. That she next saw her when she came to go to work at which time she was accompanied by a man whom the witness was unable to identify as the appellant. The witness testified the girl worked at her place two days but did not state the nature of the work. Added to this was evidence of certain telephone calls between points in Stockton, including the Traveler's Hotel, and the two houses of prostitution in Isleton some of which purported to be from the appellant.

BASIS FOR JURISDICTION TO REVIEW JUDGMENT.

This Court has jurisdiction to review the judgment of the United States District Court for the reason that the judgment is based upon a charge of violation of a federal statute, towit, Title 18 U. S. C. A., Section 398, a felony, and it is contended that the evidence introduced by the government is insufficient to justify said judgment. It is further contended that jurisdiction is conferred by reason of the fact that this case involves the right of a citizen of the United States to travel freely from one state thereof to another.

QUESTIONS PRESENTED.

1. Did the trial Court err in presuming that Dewey Henry Womble transported, caused to be transported or assisted in transporting Dewel Kathleen Womble from Kentucky to California merely because they made the trip together with another person, sharing nearly equally the expenses thereof?

2. Did the trial Court err in assuming the purpose of the trip or journey to have been for prostitution or other immoral purposes when the testimony of the government witness indicated the journey to have been made for a wholly different and innocent purpose?

3. Was the trial Court correct in presuming an immoral purpose of the trip or journey without any evidence of an immoral or even illegal purpose prior to the completion of the journey and without any evidence of previous immoral or illicit relations between the defendant and Dewel Kathleen Womble or any evidence of any previous connection of either the defendant or Dewel Kathleen Womble with prostitution?

4. Did the trial Court have the right to presume that the intent or purpose of the journey was shown by alleged activities of Dewel Kathleen Womble and Dewey Henry Womble a considerable time after their arrival at their destination?

5. Did the trial Court err in presuming that the mere registration by some person not shown to have been the defendant, at the Hotel Wolf in Stockton, California, on July 8, 1943 as Mr. and Mrs. John Robertson of Louisville, Kentucky, and the subsequent

entering and leaving of said hotel by defendant and Dewel Kathleen Womble constituted debauchery and indicated the purpose of the journey to have been for an immoral purpose?

6. Was the evidence introduced by the government sufficient to overcome the presumption of innocence of the defendant and prove him guilty beyond a reasonable doubt?

7. Was there any competent and substantial evidence fairly tending to support the verdict?

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

We seek a writ of certiorari for the reason that we believe a review of the record of this case in the Courts below will conclusively show that each of the questions set forth above must receive a negative answer. A full review by this Court will show that there is no evidence that Dewey Henry Womble transported, caused to be transported or assisted in transporting in interstate commerce, Dewel Kathleen Womble, for purposes of prostitution, other immoral purposes or at all; that the journey taken by Dewey Henry Womble was undertaken for a lawful and legitimate purpose and no law of the United States was violated by him.

Wherefore, petitioner prays this Honorable Court for its order directing a writ of certiorari to issue and that the judgment of the District Court of the United States for the Northern District of California, Northern Division, heretofore rendered herein, and the

judgment and orders subsequent thereto of the United States Circuit Court of Appeals for the Ninth Circuit be reviewed by this Court for the purpose of determining whether said judgments should be affirmed, reversed or modified.

Dated, Stockton, California,
February 16, 1945.

Respectfully submitted,
NATHANIAL A. BROWN,
Attorney for Petitioner.

HAROLD WYATT,
Of Counsel.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

DEWEY HENRY WOMBLE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

VERIFICATION OF PETITION.

State of California,
County of San Joaquin.—ss.

Harold Wyatt, being first duly sworn, deposes and says:

That he is one of the attorneys for Dewey Henry Womble, the within-named petitioner; that said Dewey Henry Womble is confined in the United States prison at Steilacoom, Washington and resides outside the county and state in which affiant has his office, to-wit the County of San Joaquin, State of California, and that affiant therefore makes this affidavit on his behalf;

that affiant has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to matters which are therein stated on information or belief, as to such matters he believes it to be true.

HAROLD WYATT.

Subscribed and sworn to before me this 16th day of February, 1945.

(Seal) FRANK G. WARREN,
Notary Public, in and for the County of San Joaquin, State of California.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

DEWEY HENRY WOMBLE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

In this brief in support of our petition for a writ of certiorari we will deal separately with each of the numbered questions set forth in the petition itself and in the interest of brevity will not fully repeat the text of the question.

QUESTION 1.

The only testimony on this question came from the government witness, Stephen Elray Culp, who testified on this subject as follows:

Q. And what arrangements, if any, were made in respect to the transportation and the payment of the expenses and cost?

A. We all paid—they paid their share and I paid mine.

Well, now, did the defendant, Dewey Henry Womble, pay the expense of himself and Dewel Katheleen Womble?

A. Well, I don't know for that.

Q. Well, how did you arrange your meals and gasoline and various expenses of your trip?

A. Dewey generally paid for that.

Q. He paid for that?

A. Yes.

Q. And it was your automobile, is that correct?

A. Yes.

Q. And he would buy gasoline en route, meals and lodging, things of that nature?

Mr. Wyatt. I object to that as leading, if the Court please.

The Court. Yes, it is somewhat leading.

Cross-Examination.

Q. Now, on the matter of expenses of the journey, it is a fact, is it not, that upon leaving Louisville, that Kathleen Womble had a considerable sum of money of her own?

A. I didn't know.

Q. It is true, isn't it, that she paid you independently for her portion of the cost?

A. She did.

Q. She paid you independently, didn't she?

A. Yes.

Q. And when you would have meals along the way, isn't it a fact, that the three of you would pool your resources and pay for those meals?

A. That is right.

Q. Each one contributing his or her share, isn't that true?

A. That is right.

Redirect Examination.

Mr. O'Hara. Q. Now, Mr. Culp, this money you advanced, or loaned back in Ludington, Michigan, $500 of that you actually posted as a bail bond for Womble, who was in trouble with violation of some Michigan law back there, isn't that true?

A. That is right.

Q. And it was—some $500 of it at least was for that purpose and was given directly into the registry of the Court, wasn't it?

A. That is right.

Q. And anything over and above that, the balance, was result of small—an accumulation of small loans made to Womble from time to time, isn't that right?

Q. Now, on the trip out here and during the journey through these various places, and various states, it was Womble's promise to either give you some money to share the expenses or to pay it himself, isn't that right?

Mr. Wyatt. I object to that as leading and suggestive.

The Court. It is leading.

Mr. O'Hara. I am merely going into the matter on redirect that counsel went into on cross.

Q. At any rate, that was the arrangement that Womble would either give you the money or pay the bills himself?

Mr. Wyatt. Same objection, if the Court please, leading and suggestive.

The Court. You may ask him what the arrangement was.

Mr. O'Hara. Q. Well, the arrangement on the matter of trip expenses were shared between you and Womble, isn't that right?

Mr. Wyatt. Same objection, leading and suggestive.

Mr. O'Hara. Q. Well, were they?

A. As far as I know.

Recross Examination.

Mr. Wyatt. Q. Now, Mr. Culp, you have given us two different accounts of the manner in which the expenses of the trip were cared for. I believe you told me on cross-examination that Kathleen Womble gave you money independently to cover a portion of the cost of her transportation.

A. On some occasions she did; we all had our money together.

Q. I believe you also told me that the three of you pooled—each contributed his or her share and formed a pool for the expenses of the trip, is that right?

A. That is right.

Q. So that it is not the fact that the cost of transporting Kathleen Womble was covered by contributions from you and Dewey Womble only?

A. I don't think so; I don't know anything about the money proposition any more than we all paid our way through.

Q. Paid your own way?

A. We all went broke the same time.

Redirect Examination.

Mr. O'Hara. Q. Now, on this matter of expenses, Mr. Culp, just tell us exactly what happened. Did or did not Womble at times pay for things or give you money to pay for things, gas or oil or meals or lodging, whatever it might be en route? Did he or did he not at times give you some money or pay them himself?

A. Well, he usually done the paying. We never all each paid our own bills. We always paid as we went along.

Q. All right. Now, he had work in St. Louis, I think both of you worked there some place in East St. Louis, is that true, or was it Louisville?

A. Louisville.

Q. Well, he had made some money there and you had?

A. That is right.

Q. Now, you used up that money coming out to the Pacific Coast, didn't you?

A. That is right.

Q. And that was money you earned and money he earned, isn't that right?

A. That is right.

Q. And I think you mentioned to Mr. Wyatt that you all went broke together?

A. That is right.

Q. So what money you had, his earnings and your earnings at Louisville went into the expenses of this trip and you ended up without any money, any of you, is that about right, or very little money, at least?

A. That is right.

As we have said, this is the only testimony on the subject in question and no reading of it can do more than establish a joint venture on the part of all three of the travelers. The automobile used belonged to Culp and his testimony clearly indicates that they each contributed his or her part of the expenses. In fact the evidence of transportation is exactly the same against the government witness as it is against the defendant. Transportation is an essential element of this offense and unless defendant's participation therein is established beyond a reasonable doubt a conviction is erroneous. Aiding in transportation as used in the statute does not mean the spending of a slightly larger sum in the payment of traveling expenses than others participating in a joint venture, but rather it means being a party to a conspiracy which results in the providing of such transportation.

QUESTION 2.

The most essential element of this crime, without which there can be no federal offense is the unlawful purpose or intent of the journey. There is utterly no evidence of unlawful purpose or intent of the journey.

There is utterly no evidence of unlawful intent or purpose on the part of defendant prior to his arrival at his destination and the trial court can only have supplied this vital deficiency by recourse to suspicion, conjecture and unreasonable inferences. Had the only evidence been the testimony of the defendant or the alleged victim we could understand its rejection and an acceptance of inference in its place, but here the only evidence on this subject came from the lips of the government's star witness, Stephen Culp, and the Court had no right to reject and disregard his testimony because of mere caprice, whim or fancy, but, in the absence of rebuttal was obliged to accept his testimony on the subject as true. That testimony is as follows:

ARGUMENT.

In connection with this assignment of error we have set forth in detail all of the testimony of Stephen Elray Culp, the only witness on this question and no reading of the testimony would do more than establish a joint venture on the part of all three of the travelers.

The automobile used belonged to Culp and his testimony indicates clearly that they each contributed his or her part of the expenses. In fact the evidence of transportation is exactly the same against the government witness as it is against the defendant.

ASSIGNMENT OF ERROR NO. 3.

The Court erred in assuming the purpose of the trip or journey to have been for prostitution or other immoral purposes from the mere fact that the defendant and Dewel Kathleen Womble journeyed together from one state to another particularly in view of the evidence of the United States witness, Stephen Elray Culp, the only witness on this subject who testified as follows:

Q. Now, did you leave Louisville with these two people, the defendant and Miss Womble?

A. Yes, sir.

Q. And where did you travel to?

A. St. Louis, Missouri.

Q. Now, was your travel more or less continuous until you reached the Pacific Coast, or did you stop off at places?

A. We stopped.

Q. You went to St. Louis, and from there where did you go?

A. Salt Lake City.

Q. And from Salt Lake City, where?

A. Walla Walla, Washington.

Q. And from there you proceeded on where?

A. San Francisco.

Q. And from San Francisco to where?

A. Stockton.

Q. All right. Now, this journey that you have just related, these various places, there were present on the journey yourself, Dewey Womble, the defendant, and Dewel Kathleen Womble, is that correct?

A. That is right.

Cross-Examination.

Mr. Wyatt. Q. Mr. Culp, you first met the defendant and his daughter in Michigan?

A. Ludington.

Q. Ludington, and you rented a room from Mr. Womble at that place, did you?

A. Yes, sir.

Q. You were employed in that city, at that time, were you?

A. That is right.

Q. And Mr. Womble was apparently operating a rooming house, is that correct?

A. Yes.

Q. And how long did you rent a room from him before the three of you journeyed on to Kentucky?

A. Oh, probably three months.

Q. And it was then decided among the three of you to go to Kentucky. Did you agree upon a destination first?

A. Yes.

Q. Then you went to Louisville, Kentucky?

A. That is right.

Q. And in Louisville did the three of you live together?

A. We had an apartment.

Q. The three of you occupied an apartment, is that correct?

A. Yes.

Q. Were you employed while you were in Louisville?

A. Yes, sir.

Q. What was the nature of your employment?

A. Boilermaker.

Q. Was Dewey Womble employed in Kentucky?

A. That is right.

Q. In the same employment, boilermaker?

A. That is right.

Q. Were you a member of the Union, the Boilermaker's Union, at that time?

A. That is right.

Q. And you held a card?

A. That is right.

Q. And do you know whether or not Dewey Womble was a member and holder of a card at that time?

A. He was.

Q. Did you both work in the same plant?

A. Yes.

Q. Who kept house for you and prepared the meals?

A. His daughter.

Q. What were the circumstances surrounding the decision to leave Louisville and go elsewhere?

A. Well, we weren't satisfied with the job.

Q. And you both quit your job there did you?

A. Yes, we did.

Q. And did you have a discussion as to what your future plan would be?

A. Yes, we did.

Q. And who was involved in that discussion?

A. Dewey and myself.

Q. Just the two of you?

A. Yes.

Q. And what did you decide?

A. To go to St. Louis.

Q. For what purpose?

A. For boilermaker.

Q. For work?

A. For work.

Q. As boilermakers?

A. Yes.

Q. And was there any discussion relative to his daughter accompanying you?

A. Not exactly. How do you mean?

Q. I mean was her name mentioned, was it decided—did you decide between you that she would go along also?

A. Yes.

Q. So that she did accompany you to St. Louis?

A. That is right.

Q. And you had discussed the matter with the defendant before leaving Louisville, and your purpose, the announced purpose of going to St. Louis was to obtain other employment as boilermakers?

A. That is right.

Q. And it is East St. Louis, that is where you went?

A. That is right.

Q. And you did go to East St. Louis?

A. That is right.

Q. And when you got there what did you do?

A. We went out and looked the job over and we thought there wasn't working hours enough so we

could make good enough, so we decided to go to Salt Lake City.

Q. The job you looked over was at Wood River, Illinois, was it?

A. That is right.

Q. And did you call at the Union in East St. Louis?

A. That is right.

Q. And the defendant, Womble, did also?

A. That is right.

Q. And you both went out to the job at Wood River?

A. That is right.

Q. And you felt the working conditions were not what you wanted?

A. That is right.

Q. And then you had a discussion?

The Court. Is this material?

Mr. Wyatt. Yes, sir, your Honor, I believe it is.

The Court. In what respect?

Mr. Wyatt. I believe the very foundation of a charge of this kind is the purpose and intent of the journey and the intent on the part of the defendant to carry any person under the White Slave Act, to transport her for immoral purposes must have been formed before the commencement of such transportation or at some point en route and before entry into the state of final destination, and I am pointing out that the intent on leaving Louisville, the purpose of the trip, was to find employment. Upon going to East St. Louis

and upon leaving there, I am going to see what their intent was.

The Court. Proceed.

Mr. Wyatt. Q. Did you have a discussion on your plans on leaving East St. Louis?

A. Yes, sir.

Q. And what was your conclusion?

A. To go to Salt Lake City.

Q. For what purpose?

A. There was a big job going on there at Provo.

Q. Provo, Utah?

A. Yes.

Q. And did you go to Salt Lake and Provo?

A. Yes, we did.

Q. And did you go—did you make your inquiries regarding a job at Salt Lake and Provo?

A. Yes.

Q. Did you go to the Union headquarters for that purpose?

A. Yes, we had to go to Salt Lake City, through the Union.

Q. And what situation did you find there with respect to jobs?

A. They were laying off boilermakers at that time.

Q. Did you get any information which caused you to go to any other place for work?

A. We did.

Q. And what was that?

A. They told us there was a job starting at Walla Walla, Washington.

Q. Is that Pasco you have in mind?

A. Or Pasco.

Q. And then did you discuss the matter of going to Pasco with the defendant?

A. That is right, I did.

Q. And did you go to Pasco, Washington?

A. Yes.

Q. And what were the conditions there?

A. Well, they weren't far enough along with job; they weren't hiring boilermakers yet.

Q. And then did you have some further discussion as to destination?

A. Yes, we did.

Q. And what was the result of that, what did you decide upon?

A. We decided to go to San Francisco and work in the shipyard.

Q. And did you go to San Francisco?

A. Yes, we did.

Q. And did you make inquiries regarding jobs in San Francisco or did you go to Stockton without doing that?

A. We looked up the jobs there and they weren't paying enough for boilermakers.

Q. And then you decided to go to Stockton?

A. That is right.

Q. Now, then before you left Louisville was there ever any discussion either between you and the defendant or between the defendant and his daughter regarding any purpose in taking her along on this trip?

A. There was not.

Q. You didn't hear any?

A. No.

Q. You didn't hear anything suggested by the defendant that he was to place her in a house of prostitution?

A. I did not.

Q. Anywhere en route on that trip did you hear any such discussion?

A. No.

Q. Did you ever hear or observe anything that would indicate that the purpose of the trip was anything other than to find employment?

A. No.

Q. Now, how long did you stay in Stockton?

A. I was there one night, I think, and part of a day.

Q. And part of a day? Did you make inquiries regarding boilermaker work in Stockton?

A. I did.

Q. And you went to the Union Hall in Stockton for that purpose?

A. That is right.

Q. You were accompanied there by the defendant, Dewey Womble?

A. That is right.

Q. In other words, when you arrived in Stockton you both went to the Union Hall and sought employment?

A. That is right.

Q. What was the situation in respect to employment in your particular trade at that time?

A. I didn't get that.

Q. Well, was there work available in your trade?

A. Yes.

Q. She did. Just a moment, please. Just in conclusion, you never at any time heard Dewey Womble assert that the purpose of his trip from Kentucky to California was for any purpose other than employment, did you?

A. That is right.

Mr. Wyatt. That is all.

Q. And who made the arrangements, or rather, who suggested the trip out to the Coast here, to East St. Louis, Denver, and so on?

Mr. Wyatt. Mr. O'Hara, if the Court please, is this again direct?

A. Well, we kind of talked it over. I had a son in San Francisco that I was kind of anxious to see and as long as I was looking for work we naturally headed this way.

Mr. O'Hara. That is all.

QUESTION 3.

There is nothing in the record to indicate any immoral or illicit relations between the defendants prior to the commencement of the journey in question nor was there any evidence to indicate that either had ever previously engaged in or been connected with prostitution. The existence of such prior immoral or illicit relationship or connection with prostitution is one of the circumstances which must exist before an

unlawful purpose can properly be inferred from all the circumstances.

> "The statute makes the intent and purpose an element of the crime, and, if the journey was planned with no immoral purpose, at the time, no crime was committed no matter what may have occurred thereafter."
>
> *United States v. Grace*, 73 F. (2d) 294, 295.

> "The intent and purpose is a fact and must be established by the proof to the satisfaction of the jury beyond a reasonable doubt; and being an element of the offense itself its existence or non-existence must be determined by the jury and not by the court. It may be inferred from circumstances, but an immoral purpose first conceived at the end of the journey is not sufficient."
>
> *Drossos v. U. S.*, 16 F. (2d) 833, 834.

In *Alpert v. U. S.*, 12 F. (2d) 352, the Court said:

> "The only evidence of what took place at the hotel in Pottsville was that given by the young woman, and whether or not the plaintiff in error intended to indulge in sexual relations before leaving the State of New York is left entirely to inference. There is no evidence of any arrangement between the couple or understanding between them for illicit intercourse after going to Pennsylvania. The fact that a journey from one state to another is followed by such intercourse, where the journey was not for that purpose, but wholly for other reasons, cannot be regarded as a violation of that act. United States v. Fisher (C.C. A.), 266 F. 270. To justify conviction, there should be convincing evidence of the intention to

transport the woman for immoral purposes, and that it was formed before the woman reached the state to which she was being transported. If the intention referred to did not exist before the woman reached the state to which she was being transported, but was formed after reaching the state in which the illicit relationship is had, conviction under the act cannot be had. Sloan v. United States (C.C.A.), 287 F. 91."

Indicative of how far the Courts have gone in holding that the immoral intent must have been formed before the commencement of the journey is the language used in *Biggerstaff v. U. S.*, 260 F. 296, where it said:

"A violation of this act requires that the transportation in interstate commerce shall be for an immoral purpose, and the mere commission of an immoral act by defendant while on an interstate journey with a woman for a lawful purpose does not, where the immorality was merely casual, constitute a violation of the act."

And again in *Fisher v. U. S.*, 266 F. 667, which held:

"The interstate transportation denounced by the act must have for its object, or be a means of effecting, or at least of facilitating, the sexual intercourse of the parties. But the mere fact that a journey from one state to another is followed by such intercourse when the journey was not for that purpose, but wholly for other reasons, to which intercourse was not related, cannot be regarded as a violation of the statute."

In the case of *Johnson v. U. S.*, 215 F. 679, the Court in requiring prior formation of intent or purpose went so far as to even hold:

> "A purpose to transport a woman for purposes of prostitution cannot be found from the fact that several days after her arrival at her destination the one who furnished the transportation supplied her with money with which to open a brothel."

In support of this holding the Court said:

> "* * * The only fact is that several days after the girl's arrival in Chicago defendant supplied the money to enable her to open and conduct a brothel. This fact might lead to a suspicion that defendant when providing transportation had the intent to aid her subsequently in her profession. But criminal convictions cannot be allowed to rest on suspicion and there were no supplementary facts like those that support the sexual intercourse counts,—no proof that defendant had ever been connected with or interested in brothels, or prior to the act in Chicago he had ever aided this or any other girl to engage in prostitution."

QUESTION 4.

As was said in *Mortenson v. U. S.*, 64 Supreme Court Reporter 1037 at 1041:

> "People not of good moral character, like others, travel from place to place and change their residence. But to say that because they indulge in illegal or immoral acts, they travel for that purpose, is to emphasize that which is incidental and ignore what is of primary significance."

And again in *Mortenson v. U. S.*, supra, at page 1040, the Court stated:

> "An intention that the women or girls shall engage in the conduct outlawed by Section 2 must be found to exist before the conclusion of the interstate journey and must be the dominant motive of such interstate movement. Without that necessary intention and motivation, immoral conduct during or following the journey is insufficient to subject the transporter to the penalties of the act."

In short, if as appears to be the fact the journey of Dewey Henry Womble and Dewel Kathleen Womble was both begun and completed for a perfectly innocent purpose and after arrival at the place of destination the victim changed her mind and embarked upon an immoral course of conduct either with or without the knowledge or assistance of defendant, the statute was not violated and no federal offense committed.

QUESTION 5.

Surely we concede that the trial Court is the trier of the facts and as such is permitted to resolve conflicts, but we contend that there was no evidence whatever of wrongdoing on the part of this defendant at all in connection with the Wolf Hotel and that if the trial Court based its judgment in part or entirely on this evidence, it was guilty of error. The Court had no right to determine that because someone registered as Mr. and Mrs. John Robertson of Louisville, Ken-

tucky, that this was done by the defendant in the absence of testimony that would support this conclusion. The handwriting was there and yet no attempt was made to identify it as appellant's handwriting although records bearing his signature in registering at the Traveler's Hotel were in the government's hands at all times and actually in Court during the trial. Neither did the clerk who was on duty and supervised the registration identify the defendant as the person who registered for the room and we may safely assume such identification would have been made if the facts had made it possible.

The truth of the matter is that the defendant and Culp went to the Traveler's Hotel where they obtained a room for which Culp registered on July 8th, and for which Womble registered on July 10th when Culp left to go on to Modesto.

QUESTIONS 6 AND 7.

A discussion of these two points would necessarily involve a restatement of the arguments heretofore presented. Verbosity is to be avoided so we shall not comment further at this time. We hope that we may have the opportunity to do so later.

CONCLUSION.

Our familiarity with this case from its inception and our long and careful study of the record convinces us that there was a complete lack of evidence from which the trial Court could properly find or infer, beyond a reasonable doubt, that petitioner transported Dewel Kathleen Womble in interstate commerce "for the purpose of prostitution or debauchery" within the meaning of the Mann Act. Indeed we contend the evidence affirmatively establishes the fact to be that the journey was for the legal, legitimate and laudable purpose of finding suitable employment in war work as testified to by the government's own witness.

We respectfully pray for the granting of a writ of review directed to the United States Circuit Court of Appeals for the Ninth Circuit, and if our efforts in connection with this petition have appeared to lack finesse and to be too lengthy, it is because of the writer's unfamiliarity with Supreme Court practice and a lack of understanding of the sources of the Court's knowledge of the facts except as disclosed by the petition and supporting brief.

Dated, Stockton, California,
February 16, 1945.

Respectfully submitted,
NATHANIAL A. BROWN,
Attorney for Petitioner.

HAROLD WYATT,
Of Counsel.

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 980

DEWEY HENRY WOMBLE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI.

NATHANIEL A. BROWN,
Bank of America Building, Stockton 5, California,
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Belding Building, Stockton 3, California,
Of Counsel.

Table of Authorities Cited

Cases	Pages
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

DEWEY HENRY WOMBLE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI.

Because of a misunderstanding of the rule, a separate typewwritten statement accompanied the petition for a writ of certiorari in this case, setting forth the reasons of the petitioner for feeling that this Court has jurisdiction to review the judgment. The clerk of the Supreme Court returned the typewritten statement with the notation that no such statement was contemplated by the rules of the Supreme Court in certiorari proceedings. This left what we sincerely believe to otherwise be a meritorious petition with

only a cursory and ineffectual statement of a basis for jurisdiction to review the judgment. We are therefore submitting herewith a supplement to our petition heretofore filed with the respectful request that it be filed and considered as an appendix to the last paragraph appearing on page six of our petition.

BASIS FOR JURISDICTION TO REVIEW JUDGMENT.

It is respectfully contended by the petitioner above named, that this Court has jurisdiction upon appeal to review the judgment or orders of the United States Circuit Court of Appeals for the Ninth Circuit dated December 22, 1944 and January 20, 1945 for the following reasons:

Title 28 U.S.C.A. Section 347 (Judicial Code, section 240, amended) provides:

> "(a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition or any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and the like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

The statute of the United States, the proper application of which is involved herein is T 18 U.S.C.A., 398 which provides that it shall be unlawful for any

person to knowingly, wilfully and feloniously transport, cause to be transported, or assist in transporting in interstate commerce, a woman with the intent and purpose on the part of such person that said woman shall practice prostitution or engage in other immoral practices.

Petitioner was convicted of a violation of T 18 U.S.C.A., 398, section 2, of the White Slave Act, popularly known as the Mann Act in the United States District Court for the Northern District of California, Northern Division. The Circuit Court of Appeals for the Ninth Circuit affirmed this judgment on December 22, 1944 and denied petition for rehearing on January 20, 1945. The Circuit Court of Appeals held that the evidence introduced was substantial and sufficient to support the judgment of the trial Court.

At no stage of the proceedings has it been contended by the government that there was ever introduced any evidence of prostitution, illicit or even improper conduct or behavior of the parties prior to the arrival at their destination. There was direct evidence from the lips of the only government witness concerning this phase of the case that he was a companion of petitioner and the woman at all stages of the journey and that it was made for the purpose of obtaining employment and that he never heard it suggested that the trip was to be made or was being made for any other purpose. He testified that several stops were made enroute and that he and petitioner sought employment in defense work at their trade of boilermakers and that they also sought such employment the day

following their arrival in California. The unlawful intent or purpose was entirely inferred from conduct of the parties subsequent to their arrival at their destination. This was in conflict with decisions previously rendered in other of the United States Circuit Courts,

> "The statute makes the intent and purpose an element of the crime, and, if the journey was planned with no immoral purpose at the time, no crime was committed no matter what may have occurred thereafter."
>
> *United States v. Grace,* 73 F. (2d) 294, 295.

> "The intent and purpose is a fact and must be established by the proof to the satisfaction of the jury beyond a reasonable doubt; and being an element of the offense itself its existence or nonexistence must be determined by the jury and not by the court. It may be inferred from circumstances, but an immoral purpose first conceived at the end of the journey is not sufficient."
>
> *Drossos v. U. S.,* 16 F. (2d) 833, 834.

In *Alpert v. U. S.,* 12 F. (2d) 352, the Court said:

> "The only evidence of what took place at the hotel in Pottsville was that given by the young woman, and whether or not the plaintiff in error intended to indulge in sexual relations before leaving the State of New York is left entirely to inference. There is no evidence of any arrangement between the couple or understanding between them for illicit intercourse after going to Pennsylvania. The fact that a journey from one state to another is followed by such intercourse, where the journey was not for that purpose, but

wholly for other reasons, cannot be regarded as a violation of that act. United States v. Fisher (C.C.A.), 226 F. 670. To justify conviction, there should be convincing evidence of the intention to transport the woman for immoral purposes, and that it was formed before the woman reached the state to which she was being transported. If the intention referred to did not exist before the woman reached the state to which she was being transported, but was formed after reaching the state in which the illicit relationship is had, conviction under the act cannot be had. Sloan v. United States (C.C.A.), 287 F. 91."

See also:

Biggerstaff v. U. S., 260 F. 296;
Johnson v. U. S., 215 F. 679;
Van Pelt v. U. S., 240 F. 346.

The judgment in this case is also in conflict with the principles laid down by this Court in its decision in *Mortensen v. U. S.*, decided May 15, 1944 and reported in 64 Sup. Ct. Rep. 1037 where at page 1039 this Court said:

"An intention that the woman or girls shall engage in the conduct outlawed by Section 2 must be found to exist before the conclusion of the interstate journey and must be the dominant motive of such interstate movement. And the transportation must be designed to bring about such result. Without that necessary intention and motivation, immoral conduct during or following the journey is insufficient to subject the transporter to the penalties of the Act."

This case presents the question of whether or not the federal government has the right through the enactment of a criminal statute to control or punish the immoral acts of a citizen conceived and performed entirely within the boundaries of a single state.

It presents the question of whether or not the Mann Act seeks to make unlawful the movement of one of the citizens of the United States from one state to another where the only evidence of wrongdoing relates to a time after his arrival in the state of his destination.

If as we contend these questions are actually presented by the record in this case it would appear that no argument or statement of grounds upon which it is contended they are substantial are required. Their substantiality seems self evident.

Additional cases which we believe sustain jurisdiction are:

Mergenthaler Linotype Co. v. Davis, 251 U. S. 256;
Magnum Import Co. v. Coty, 262 U. S. 159;
Kann v. U. S., 65 Sup. Ct. Rep. 148;
Mortensen v. U. S., supra.

Dated, Stockton, California,
March 12, 1945.

NATHANIEL A. BROWN,
Attorney for Petitioner.

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Of Counsel.

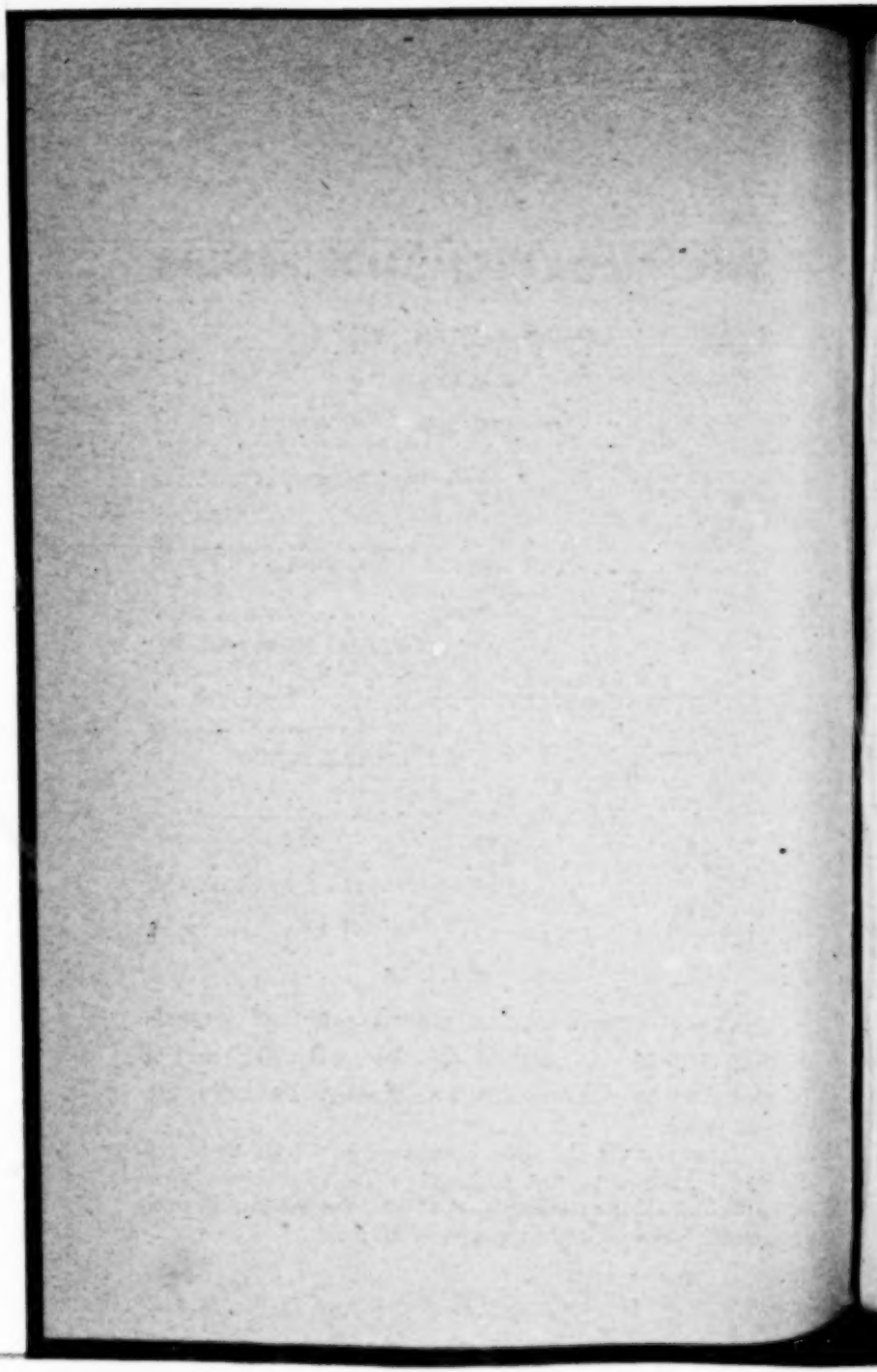
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639194—45



In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 980

DEWEY HENRY WOMBLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the circuit court of appeals (R. 67–69, 72)[1] is reported at 146 F. 2d 263.

JURISDICTION

The judgment of the circuit court of appeals was entered December 22, 1944 (R. 70), and a petition for rehearing was denied January 20,

[1] That part of the opinion appearing on page 68 of the record has been printed incorrectly. The page should begin with line 14, "leen Womble * * *", and the first 13 lines should follow after the last line on the page.

1945 (R. 71). The petition for a writ of certiorari was filed February 24, 1945, and a supplement to the petition was filed March 19, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether there was sufficient evidence from which the trial judge, sitting without a jury, could find that petitioner assisted in transporting a woman in interstate commerce for the purpose of prostitution.

STATUTE INVOLVED

Section 2 of the Act of June 25, 1910, c. 395, 36 Stat. 825, 18 U. S. C. 398, known as the Mann Act, provides in part:

> That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any

other immoral practice; * * * shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

STATEMENT

On April 10, 1944, petitioner was indicted in the District Court for the Northern District of California for violation of the Mann Act, in that on July 10, 1943, he transported, caused to be transported, and assisted in transporting Dewell Kathleen Womble in interstate commerce from Louisville, Kentucky, to Stockton, California, for the purpose of having her practice prostitution (R. 2–3). After a trial by the court without a jury (R. 5), petitioner was convicted and sentenced to imprisonment for a term of five years (R. 7–8). On appeal to the Circuit Court of Appeals for the Ninth Circuit, the judgment was affirmed (R. 70), the court holding that there was substantial evidence to show that petitioner had assisted in transporting Dewell from Kentucky to California with the intent that she should practice prostitution (R. 68–69).

The evidence adduced by the Government may be summarized as follows:

Stephen Elray Culp testified that he met petitioner and his daughter, Dewell Kathleen Womble,

in Ludington, Michigan, in February 1943; Culp occupied a room in a rooming house operated by petitioner and his daughter (R. 38). In May 1943 Culp, petitioner, and Dewell went to Louisville, Kentucky, where they stayed for about three weeks; petitioner and Culp worked at their trade as boilermakers, while Dewell kept house for them (R. 38–39). The two men became dissatisfied with their jobs, and after some discussion they, with Dewell, started on a trip in Culp's automobile to seek better jobs, the journey culminating in Stockton, California, in July 1943. En route, they stopped at various places looking for employment, but found nothing satisfactory. (R. 38–40.) Upon their arrival in Stockton, petitioner and Culp went to a union hall seeking employment, and the next day Culp left Stockton. On several occasions thereafter he returned to Stockton to see petitioner and Dewell and on one of these visits petitioner told him that Dewell could be located at the New England Rooms. (R. 40; see pp. 5–6, *infra*.) In respect of the expenses of the trip, Culp testified in various ways: "* * * we all paid the expenses, they paid their share and I paid mine. Dewey Womble generally paid for our meals, gasoline and various expenses of our trip" (R. 38–39). "On the matter of the expenses of the journey, Miss Womble paid me independently for her portion of the cost and when we would have meals along

the way the three of us would pool our resources and pay for the meals." "As far as I know the trip expenses were shared between Womble and me." "On some occasions Dewell Kathleen Womble gave me money to cover her portion of the transportation cost; we all had our money together. * * * we all paid our way through." "Both Womble and I worked in Louisville and this money went toward the expenses of the trip. We all went broke or nearly broke together." (R. 41.) Culp also testified that he never heard or observed anything indicating that Dewell was to engage in prostitution, or that the purpose of the trip was other than to find employment (R. 40–41).

The assistant manager of the Hotel Wolf in Stockton, California, testified that from July 8 to July 12, 1943, a Mr. and Mrs. John Robertson of Louisville, Kentucky, occupied a single room at the hotel. The night clerk identified petitioner and Dewell as Mr. and Mrs. Robertson, basing his identification upon his observation of them entering and leaving the hotel during the time they stayed there. (R. 46, 47.) It appeared that after leaving this hotel, petitioner stayed at the Traveler's Hotel in Stockton on several days in September, October, and November 1943 (R. 47–48), while Dewell, using the name Ethel Robertson, lived for a time at the New England Rooms in Stockton (R. 39, 54).

Dewell was arrested under that alias by the Stockton police on August 6, 1943, on a charge of vagrancy based upon practicing prostitution; the arrest resulted from the report of a man that he had contracted a venereal disease after having intercourse with Dewell at the New England Rooms on July 29, 1943 (R. 42–43, 56).

Sally Mason, the operator of a house of prostitution in Isleton, California, testified that in the early part of September 1943, petitioner, using the name Ray, asked her whether she could use a girl; that she told petitioner that she did not need a girl at the time; and that two or three days later Dewell appeared at her place and worked there as a prostitute for two weeks (R. 44). Documentary evidence was introduced from which it appeared that in September 1943 petitioner made several calls from the Traveler's Hotel to Sally Mason's house of prostitution; one of these calls, on September 14, was specifically identified as having been made to a person named Ethel (R. 45, 48, 50–53).[2]

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[2] The police officer who arrested Dewell on August 6, 1943, testified that she was in actual custody from August 6 to September 23, 1943 (R. 56–57). The testimony of Sally Mason that Dewell worked at her place in September 1943 is corroborated by the evidence that the telephone calls made by petitioner to Sally Mason's place occurred on September 12, 14, 15, 16, and 29, 1943 (R. 45, 48, 52–53). It is likely, therefore, that the police officer was mistaken as to the exact period Dewell was in custody.

Tina Avila, who operated another house of prostitution in Isleton, California, testified that for two days in October 1943 Dewell worked at her place, and that when Dewell came to work she was accompanied by a man who "resembled" petitioner (R. 43–44). It appears that petitioner telephoned this place on November 6, 1943 (R. 48, 49, 53).

Petitioner offered no evidence in defense (see R. 55, 57).

DISCUSSION

1. Petitioner contends (Pet. 7–8, 13–18) that there was no evidence from which the trial judge could properly find that he assisted in the transportation of Dewell, since the evidence established solely that the trip was a joint venture, the expenses of which were shared nearly equally between himself, Culp, and Dewell, and that, assuming that he spent "a slightly larger sum" than the others, such proof does not establish aiding in transportation within the meaning of the statute. We think, however, that the trial judge could properly find on the evidence that the trip could not have been made if the three participants had not pooled their resources and that petitioner's contribution covered a substantial part of the expenses; indeed, it is a fair inference that the major portion of the expense of Dewell's transportation was paid by petitioner (*supra*, pp. 4–5). Clearly petitioner "assisted", within

the meaning of the statute, in the transportation of Dewell from Kentucky to California.[3]

2. Petitioner also contends (Pet. 7–8, 18–34; Supp. Pet. 3–6) that there was no evidence from which the trial judge could reasonably find that the journey was undertaken in order that Dewell would engage in prostitution after their arrival in California. The applicable principles are clear. In *Mortensen* v. *United States*, 322 U. S. 369, 374, this Court said that "To constitute a violation of the Act, it is essential that the interstate transportation have for its object or be the means of effecting or facilitating the proscribed activities. * * * An intention that the women or girls shall engage in the conduct outlawed by § 2 must be found to exist before the conclusion of the interstate journey and must be the dominant motive of such interstate movement.[4] * * * Without that necessary intention and motivation,

[3] *Cf. Gebardi* v. *United States*, 287 U. S. 112, 118: "Transportation of a woman or girl whether with or without her consent, or causing or aiding it, or furthering it in any of the specified ways, are the acts punished, when done with a purpose which is immoral within the meaning of the law." And, see *People* v. *Thurman*, 63 Cal. App. 147, 152 (1923): "The words 'assist' and 'aid' are synonymous, and each imports a contribution of effort supplementing the efforts of another."

[4] We assume that this does not mean that where the defendant accompanies the girl on the interstate trip he may not have a legitimate purpose in so far as his own transportation is concerned but a proscribed purpose in respect of her transportation. See *Simon* v. *United States*, 145 F. 2d 345, 346–347 (C. C. A. 4); *Van Pelt* v. *United States*, 240 Fed. 346, 349 (C. C. A. 4).

immoral conduct during or following the journey is insufficient to subject the transporter to the penalties of the Act." While this is so, it also seems clear that the conduct of the parties within a reasonable time, at least, after the transportation has terminated may have sufficient probative value to support a reasonable inference that the trip was undertaken for the inhibited purpose. *United States* v. *Reginelli*, 133 F. 2d 595 (C. C. A. 3), certiorari denied, 318 U. S. 783; *Tedesco* v. *United States*, 118 F. 2d 737, 741-742 (C. C. A. 9); *Grayson* v. *United States*, 107 F. 2d 367, 370 (C. C. A. 8); *Neff* v. *United States*, 105 F. 2d 688, 691 (C. C. A. 8); *Kelly* v. *United States*, 297 Fed. 212, 213 (C. C. A. 9); *Kulp* v. *United States*, 210 Fed. 249, 251 (C. C. A. 3); cf. *Aplin* v. *United States*, 41 F. 2d 495 (C. C. A. 9); *Johnson* v. *United States*, 215 Fed. 679 (C. C. A. 7).

The question here is whether, applying these settled principles, the evidence, with the inferences which may properly be drawn therefrom, is sufficiently substantial in character to permit a finding that prostitution motivated Dewell's transportation. Of course, Culp's testimony, relating to the activities of the three participants prior to and during the course of the journey up to the time they arrived in California (*supra*, pp. 3–4), does not support such a conclusion; he testified that "Before we left Louisville, I did not engage in any discussion, nor did I hear any discussion re-

garding any purpose in taking Miss Womble on the trip nor did I hear it suggested either at that time or en route on the trip that she was to engage in prostitution. I never heard or observed anything that would indicate the purpose of the trip was anything other than to find employment." (R. 40–41.) On the other hand, the evidence as to the activities of petitioner and Dewell after their arrival in California raises an inference, we submit, that, so far as Dewell was concerned, her transportation was for the purpose of having her engage in prostitution. That evidence was that within, apparently, a few days after they reached California, petitioner and Dewell occupied a single room at a hotel at which they registered under an assumed name as man and wife,[5] that within two or three weeks Dewell engaged in sexual relations for which she was shortly thereafter arrested upon a charge of

[5] While the indictment charged not only that Dewell was transported with the intent and purpose that she should practice prostitution but also engage in other immoral practices (R. 2–3), the above is the only evidence in the record that could relate to any immoral purpose other than prostitution.

Petitioner's claim (Pet. 7–8) that the trial court could not determine from the evidence that petitioner and Dewell were the persons who registered at the hotel as man and wife, is untenable. While the night clerk at the hotel testified that his identification at the hotel was "based entirely on seeing them going in and out of the hotel" (R. 47), the evidence also disclosed that the persons who registered as Mr. and Mrs. Robertson were from Louisville, Kentucky (R. 46), and that Dewell thereafter went under the name of Ethel Robertson (R. 54, 56).

vagrancy based upon practicing prostitution, that about two months after her arrival in California petitioner sought to place her in a house of prostitution, and that thereafter she did practice prostitution at that house and at another house (*supra*, pp 5–7).

Two courts have held that the evidence was sufficient to prove the prohibited purpose. If this Court should agree with those holdings, as we do, it would seem that the case may be adequately disposed of by denial of the petition for certiorari. On the other hand, if the Court should be of the view that those holdings are incorrect, and that the issue presented is sufficiently important to warrant certiorari, it is respectfully suggested that, since the record is not voluminous and the issue is narrow, an appropriate disposition would be to grant the writ and reverse the judgment below without additional briefs or argument. Cf. *Oriolo* v. *United States*, No. 727, present term, decided February 26, 1945.

Respectfully submitted.

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APRIL 1945.

U. S. GOVERNMENT PRINTING OFFICE: 1945

No. 980. WOMBLE *v.* UNITED STATES. On petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit. April 23, 1945. *Per Curiam:* The petition for writ of certiorari is granted. The judgment is reversed for want of substantial evidence to sustain the conviction. Dissenting: MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS. *Mr. Nathaniel A. Brown* for petitioner. *Solicitor General Fahy, Assistant Attorney General Tom C. Clark, Messrs. Robert S. Erdahl* and *Leon*